

# **SOUTH DAKOTA RETIREMENT SYSTEM LAW**

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**2015 EDITION**



Mat #41857850 (comb bound)

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Comb Bound: 250 copies of this document were printed by SDRS at a cost of \$26.23  
per document

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## SDCL Sections Affected by 2015 Session Laws

<b>Section</b>	<b>Action</b>	<b>Bill/Ex.Ord.</b>	<b>Ch. No.</b>	<b>Sec. No.</b>
3-12-47	Amended	HB 1007	25	1
3-12-47	Amended	HB 1007	25	2
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## ARSD Text Changes

<b>Rule</b>	<b>Action</b>	<b>SDR Vol.</b>	<b>SDR Page</b>	<b>Effective</b>
62:03:01:01	Amended	41	219	July 1, 2015
62:03:05:01	Amended	41	219	July 1, 2015
62:03:07:01	Amended	41	219	July 1, 2015
62:03:07:01.01	Adopted	41	219	July 1, 2015
62:03:07:01.02	Adopted	41	219	July 1, 2015
62:03:07:02	Amended	41	219	July 1, 2015
62:03:07:03	Amended	41	219	July 1, 2015
62:03:07:03.01	Adopted	41	219	July 1, 2015
62:03:07:04	Amended	41	219	July 1, 2015
62:03:07:06	Amended	41	219	July 1, 2015
62:03:07:06.01	Adopted	41	219	July 1, 2015
62:03:07:07	Amended	41	219	July 1, 2015

## ARSD Text Changes by 2015 Session Laws

<b>Rule</b>	<b>Action</b>	<b>Bill/Ex.Ord.</b>	<b>Ch. No.</b>	<b>Sec. No.</b>
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# SOUTH DAKOTA CODIFIED LAWS

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**SOUTH DAKOTA RETIREMENT SYSTEM      §§ 3-12-1 to 3-12-45**  
**Repealed**

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**Administrative Code References**

State retirement system, see S.D. Admin. R. 62:01:01:01 et seq.

**3-12-1 to 3-12-45. Repealed by SL 1974, ch 35, § 80**

**Historical and Statutory Notes**

Section 3-12-1 terminated retirement programs prior to 1951.

Section 3-12-2 related to definition of terms.

Section 3-12-3 established the retirement system and provided for an effective date of operation.

Section 3-12-4 created a board of trustees and legal adviser to the board.

Section 3-12-4.1 related to direction and supervision by Bureau of Personnel.

Section 3-12-5 related to oath of office of trustees.

Section 3-12-6 related to reimbursement of trustees' expenses.

Section 3-12-7 related to meetings of board, procedural rules and record of proceedings.

Section 3-12-8 related to the chairman and vice-chairman of the board.

Section 3-12-9 related to appointment of administrator, duties and bond.

Section 3-12-10 related to employment of services and personnel, services rendered by auditor's office.

Section 3-12-11 related to rules and regulations.

Section 3-12-12 related to records of board proceedings, preparation and dis-

## §§ 3-12-1 to 3-12-45

## PUBLIC OFFICERS AND EMPLOYEES

### Repealed

tribution of annual report, annual audit, terms of trustees' bonds.

Section 3-12-13 related using the name of the retirement system in transactions.

Section 3-12-14 related to selection and change of funding agents, compensation.

Section 3-12-15 related to control and management of fiscal affairs.

Section 3-12-16 related to determination of prior service credits.

Section 3-12-17 related to change of future service benefit formula.

Section 3-12-18 related to service requirement for participation in system.

Section 3-12-19 required employees to participate, acceptance or continuation of employment deemed consent.

Section 3-12-19.1 related to circuit court reporters.

Section 3-12-19.2 made municipal judges and court reporters eligible to participate as members of political subdivision.

Section 3-12-20 excluded officers and employees from system.

Section 3-12-20.1 related to political subdivision governing bodies.

Section 3-12-21 related to election by officer or department head to participate in system, political subdivision officials.

Section 3-12-22 related to members' contributions, salary deduction and credit to retirement system, disbursement.

Section 3-12-23 related to employers' contributions, credit to retirement fund, and excess contributions.

Section 3-12-23.1 related to delinquent subdivision contributions, deduction from state payments.

Section 3-12-24 related to funds credited to retirement system fund, disbursements.

Section 3-12-25 related to normal retirement, pension payable, determination of future service and prior service benefits.

Section 3-12-26 related to certification of prior service, proof where records lost or destroyed.

Section 3-12-27 related to vesting schedule for normal retirants, minimum age for retirement.

Section 3-12-27.1 related to early retirement, pension payable.

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Section 3-12-29 related to monthly benefits, vested interest, lump-sum payments, application for retirement.

Section 3-12-29.1 related to designation, alteration, or revocation of beneficiary, payment of benefits.

Section 3-12-29.2 related to death benefit payable to beneficiary or estate.

Section 3-12-29.3 related to suspension of annuity during employment.

Section 3-12-30 related to refund of contributions on termination of public service.

Section 3-12-31 related to benefits and contributions suspended during leave of absence, authorized leaves, credit for military service.

Section 3-12-32 related to contributions left in system on termination of employment, reinstatement on return, withdrawal by employee not returning.

Section 3-12-33 related to termination of membership on withdrawal of contributions or retirement.

Section 3-12-34 related to re-employment of former employee, vested interest, additional credits.

Section 3-12-35 related to cessation of membership on retirement or death.

Section 3-12-36 permitted political subdivisions and agencies to participate in system.

Section 3-12-37 related to commencement of participation by political subdivision.

Section 3-12-38 related to contributions by and for political subdivision employees, remittance and statement to state treasurer.

Section 3-12-39 related to information furnished board of trustees on employees of political subdivision.

Section 3-12-40 related to withdrawal from participation by political subdivision, liquidation of accrued benefits.

Section 3-12-41 related to optional form of pension, procedure for election by member.

Section 3-12-42 related to expense fund for administrative expenses.

## SOUTH DAKOTA RETIREMENT SYSTEM

## § 3–12–46

Section 3–12–43 related to integration of other retirement plans into retirement system.

Section 3–12–44 related to correction of errors, adjustment of payments.

Section 3–12–45 related to exemption from taxation, process, and assignment.

### 3–12–46. Previous retirement systems consolidated—Purpose

The Supreme and Circuit Court Judicial Retirement System, district county court and municipal court judges retirement program, South Dakota Teachers Retirement System, South Dakota Municipal Retirement System, South Dakota Law Enforcement Retirement System, and South Dakota Public Employees Retirement System are hereby continued as a consolidated system known as the South Dakota Retirement System to provide an orderly means of continuing benefits of those already retired and those eligible to retire from the respective systems.

**Source:** SL 1967, ch 303, § 1; SDCL § 3–12–3; SL 1968, ch 216, § 1; SL 1974, ch 35, § 1; SL 1976, ch 39, § 4.

#### Historical and Statutory Notes

SL 1979, ch 28 provided certain benefits for teachers who retired prior to July 1, 1974 qualified for a straight life annuity under former § 13–45–56, and provided an appropriation therefor.

#### Cross References

Deferred compensation plan for public employees, see § 3–13–49 et seq.

Retirement program liquidation, authorization, see § 6–2–1 et seq.

#### Library References

Officers and Public Employees  
⌘101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

#### Research References

##### ALR Library

Beneficiary and heirs or legatees of licensed employee covered by public pension or retirement plan, rights as between, 5 A.L.R.3d 644.

Divorce and separation, pension or retirement benefits as subject to award or division by court in settlement of property rights between spouses, 94 A.L.R.3d 176.

Firefighters, determination whether firefighter's disability is service-connected for disability pension purposes, 7 A.L.R.4th 799.

Mandatory retirement of public officer or employee based on age, 81 A.L.R.3d 811.

Peace officer, determination whether peace officer's disability is service-connected for disability pension purposes, 12 A.L.R.4th 1158.

Unemployment compensation, right to unemployment compensation as affected by receipt of pension, 56 A.L.R.3d 520.

#### United States Supreme Court Public employee retirement benefits,

##### *Pensions,*

Variance in municipal employees' pension contribution based on sex of employee, see *City of Los Angeles, Dept. of Water and Power v. Manhart*, U.S. Cal.

## § 3-12-46

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1978, 98 S.Ct. 1370, 435 U.S. 702, 55 L.Ed.2d 657, on remand 577 F.2d 98.

### *Retirement age,*

City fire fighters, mandatory retirement age, see *Johnson v. Mayor and City Council of Baltimore*, U.S.Md.1985, 105 S.Ct. 2717, 472 U.S. 353, 86 L.Ed.2d 286, on remand 637 F.Supp. 903.

### Notes of Decisions

#### Counties 1

#### Exemptions 2

##### 1. Counties

Retaliation claim, set forth in complaint based on failure of county to join state retirement system, failed to state a cause of action. SDCL 3-12-46 et seq. *Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. Officers And Public Employees ⇌ 119

Failure of county to adopt a pension plan did not give rise to a due process claim. SDCL 3-12-46 et seq.; U.S.C.A. Const.Amend. 14. *Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. Civil Rights ⇌ 1136

Reason or motive behind failure of county to join state retirement system did not toll 180-day limitation period for filing discrimination complaint with

EEOC in order to preserve a claim under the Age Discrimination in Employment Act by county employee, who clearly knew or should have known that county had not joined the system. SDCL 3-12-46 et seq.; Age Discrimination in Employment Act of 1967, §§ 2 et seq., 7(d), 29 U.S.C.A. §§ 621 et seq., 626(d). *Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. Civil Rights ⇌ 1530

County had no obligation under Age Discrimination in Employment Act to adopt a pension plan for its employees. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.; SDCL 3-12-46 et seq. *Rothenberger v. Douglas County*, 1983, 586 F.Supp. 210, affirmed 736 F.2d 1240, certiorari denied 105 S.Ct. 1185, 469 U.S. 1213, 84 L.Ed.2d 332. Civil Rights ⇌ 1207

##### 2. Exemptions

Debtors' interests in qualified profit sharing plans were not exempt under South Dakota statute exempting contributions and benefits accruing to debtor under South Dakota retirement system, where debtor's employer, under which profit sharing plan was established, was not participant in South Dakota retirement system. SDCL 3-12-46 et seq. In re *Bowen*, 1987, 80 B.R. 1012. Exemptions ⇌ 49

## 3-12-47. Definition of terms

Terms as used in this chapter, unless the context otherwise requires, mean:

- (1) Repealed by SL 2000, ch 24, § 1.
- (2) "Accumulated contributions," the sum of:
  - (a) All contributions by a member, including member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71;
  - (b) Seventy-five percent of employer contributions if the member has less than three years contributory ser-

- vice or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) and the contributory service concluded prior to July 1, 2010, or fifty percent of employer contributions if the contributory service concluded on or after July 1, 2010, or one hundred percent of employer contributions if the member has three years or more contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) and the contributory service concluded prior to July 1, 2010, or eighty-five percent of employer contributions if the contributory service concluded on or after July 1, 2010; and
- (c) Member redeposits pursuant to § 3-12-80 and member credited service purchases pursuant to §§ 3-12-83, 3-12-84, and 3-12-84.2;

all together with the effective rate of interest credited thereon.

If credited service is purchased pursuant to § 3-12-83, 3-12-84, or 3-12-84.2, only the amount of the purchase shall be included as accumulated contributions for the purposes of a refund under this chapter;

- (2A) "Actuarial accrued liability," the present value of all benefits less the present value of future normal cost contributions;
- (3) "Actuarial equivalent," a benefit of equal value, including the improvement factor assumption adopted by the board, computed on the basis of interest rate and mortality assumptions adopted by the board for purposes of the actuarial valuation. For purposes of this definition, if the board adopts a select and ultimate rate of interest, the interest rate is the ultimate rate. Also, for purposes of this definition, mortality shall be based on a unisex rate that is fifty percent male and fifty percent female for employees and beneficiaries, based on the mortality rates for retired employees and beneficiaries including, if the board adopts a generational mortality table, projection of mortality improvement to the calendar year containing the beginning of the plan year;

- (4) "Actuarial requirement," the normal cost and the interest on and amortization of the unfunded actuarial accrued liability accumulated to date over a thirty year period, all expressed in terms of a percentage of covered payroll;
- (5) "Actuarial experience analysis," a periodic report which reviews basic experience data and furnishes actuarial analysis which substantiates the assumptions adopted for the purpose of making an actuarial valuation of the system;
- (6) "Actuarial valuation," a projection of the present value of all benefits and the current funded status of the system, based upon stated assumptions as to rates of interest, mortality, disability, salary progressions, withdrawal, and retirement as established by a periodic actuarial experience analysis which takes into account census data of all active members, vested terminated members and retired members and their beneficiaries under the system;
- (6A) "Actuarial value of assets," the total assets of the system, taking market appreciation into account on a rational and systematic basis;
- (7) "Air rescue firefighters," employees of the Department of the Military who are stationed at Joe Foss Field, Sioux Falls, and who are directly involved in fire fighting activities on a daily basis;
- (8) "Annuity," payment for life; all annuities shall be payable for life unless specifically provided for otherwise;
- (9) "Approved actuary," any actuary who is a member of the American Academy of Actuaries or an Associate or a Fellow of the Society of Actuaries who meets the qualification standards of the American Academy of Actuaries to issue actuarial opinions regarding the system or any firm retaining such an actuary on its staff and who is appointed by the board to perform actuarial services;
- (9A) "Assumed rate of return," the actuarial assumption adopted by the board pursuant to § 3-12-121 as the annual assumed percentage return on trust fund assets, compounded;

- (10) "Beneficiary," the person designated by a member of the system to receive any payments after the death of such member;
- (11) "Benefits," the amounts paid to a member, spouse, spouse and family, child, or beneficiary as a result of the provisions of this chapter;
- (12) "Board," the Board of Trustees of the South Dakota Retirement System;
- (13) "Campus security officers," employees of the Board of Regents whose positions are subject to the minimal educational training standards established by the law enforcement standards commission pursuant to chapter 23-3 and who satisfactorily complete the training required by chapter 23-3 within one year of employment and whose primary duty as sworn law enforcement officers is to preserve the safety of the students, faculty, staff, visitors and the property of the University of South Dakota and South Dakota State University. The employer shall file with the system evidence of the appointment as a sworn law enforcement officer at the time of employment and shall file evidence of satisfactory completion of the training program pursuant to chapter 23-3 within one year of employment;
- (14) "Child," depending on the circumstances, as follows:
  - (a) For purposes of benefits pursuant to this chapter, an unmarried dependent child of the member, who has not passed the child's nineteenth birthday and each unmarried dependent child, who is totally and permanently disabled, either physically or mentally, regardless of the child's age, if the disability occurred prior to age nineteen. It includes a stepchild or a foster child who depends on the member for support and lives in the household of the member in a regular parent-child relationship. It also includes any child of the member conceived during the member's lifetime and born after the member's death; or
  - (b) For purposes of beneficiary-type payments pursuant to this chapter, a person entitled to take as a child via

- intestate succession pursuant to the provisions of Title 29A;
- (15) “Class A credited service,” service credited as a Class A member of the system;
  - (16) “Class A member,” all members other than Class B members;
  - (17) “Class B credited service,” service credited as a Class B member of the system;
  - (18) “Class B member,” a member who is a justice, judge, state law enforcement officer, magistrate judge, police officer, firefighter, county sheriff, deputy county sheriff, penitentiary correctional staff, parole agent, air rescue firefighter, campus security officer, court services officer, conservation officer, or park ranger;
  - (18A) “Class C credited service,” service credited as a Class C member of the system;
  - (18B) “Class C member,” any member of the cement plant retirement plan including any retiree or any vested member;
  - (19) “Classified employees,” employees of public school districts who are not required by law to be certified as teachers, employees of the colleges and universities under the control of the board of regents who are not faculty or administrators and come within the provisions of chapter 3-6A, employees of public corporations, employees of chartered governmental units, and all other participating employees not elsewhere provided for in this chapter;
  - (19A) “Comparable level position,” a member’s position of employment that is generally equivalent to the member’s prior position of employment in terms of required education, required experience, required training, required work history, geographic location, and compensation and benefits;
  - (20) “Compensation,” gross wages paid to a member by the employer for personal services rendered during the period considered as credited service:
    - (a) Compensation includes amounts reported as wages, tips and other compensation on the member’s federal

form W-2 wage and tax statement, except as otherwise excluded in this subdivision; the amount of member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71; any amount contributed to a member's individual retirement plan which meets the requirements of section 401, 403, 408, or 457 of the Internal Revenue Code; and any amount contributed to a plan described in section 125 of the Internal Revenue Code; and any amount contributed to the system pursuant to § 3-12-83.2 in accord with § 414(h)(2) of the Internal Revenue Code;

- (b) Compensation does not include travel, meals, lodging, moving or any other expenses incidental to an employer's business which is reimbursed by the employer; lump sum payments for sick leave; lump sum payments for annual leave; payments for insurance coverage of any kind or any other employee benefit by an employer on behalf of an employee or an employee and dependents; any amount paid in a one-time lump sum payment or over a period of time and based on or attributable to retirement or an agreement to retire in the future; payments made upon dismissal or severance; worker's compensation payments; and payments contingent on a member terminating employment at a specified time in the future paid or payable in a lump sum or over a period of time;
  - (c) Any compensation in excess of the limits established in § 401(a)(17) of the Internal Revenue Code shall be disregarded for purposes of contributions or for benefit calculations under the system. However, the limit does not apply to compensation earned by a member if the member was employed by a participating unit on or before June 30, 1996;
- (21) "Conservation officers," employees of the Department of Game, Fish and Parks and the Division of Wildlife or Division of Custer State Park who are employed pursuant to § 41-2-11 and whose positions are subject to the

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requirements as to education and training provided in chapter 23-3;

- (21A) “Consumer price index,” the consumer price index for urban wage earners and clerical workers calculated by the United States Bureau of Labor Statistics;
- (22) “Contributory service,” service to a participating unit during which contributions were made to a South Dakota Retirement System, which may not include years of credited service as granted in § 3-12-84 or 3-12-84.2;
- (23) “Court services officers,” persons appointed pursuant to § 26-7A-8;
- (23A) “Covered employment,” a member’s employment as a permanent full-time employee by a participating unit;
- (24) “Credited service,”
  - (a) Years of service, or fractions thereof, for which member contributions were made to the system;
  - (b) Years of noncontributory service, or fractions thereof, credited prior to July 1, 1974, previously credited under the provisions of the retirement systems consolidated pursuant to § 3-12-46;
  - (c) Any period of authorized leave of absence or sick leave with pay for which deductions for member contributions are made, deposited, and credited to the fund;
  - (d) Any period of authorized leave of absence or sick leave without pay or temporary layoff, during or for which a member obtained credit by payments to the fund made in lieu of salary deductions;
  - (e) Any period during which a member is on an authorized leave of absence to enter military service, if the member fulfills the provisions of § 3-12-86;
  - (f) Years of service, or fractions thereof, by faculty and administrators employed by the board of regents prior to April 1, 1964, credited pursuant to §§ 3-12-69.4 and 3-12-69.5;
  - (g) Years of noncontributory service, or fractions thereof, earned prior to July 1, 1967, but not credited under the South Dakota public employee retirement system

as it was consolidated pursuant to § 3-12-46 because the person earned the service prior to attaining the age of thirty. The service shall be credited only to those persons who are contributing members on July 1, 1987. No service may be credited pursuant to this subsection to any member who has withdrawn the member's accumulated contributions after July 1, 1967; and

- (h) Years of noncontributory service, or fractions thereof, earned by a member from July 1, 1967, to June 30, 1974, inclusive, but not credited under the South Dakota public employee retirement system because of the age and service restrictions established under that system.

If the conditions described in § 3-12-122 occur and benefit reductions are necessary to correct those conditions, the credited service granted by this subdivision may be reduced or eliminated;

- (25) "Deputy county sheriff," an employee of a county that is a participating unit, appointed by the board of county commissioners pursuant to §§ 7-12-9 and 7-12-10, who is a permanent full-time employee and whose position is subject to the minimum educational and training standards established by the law enforcement standards commission pursuant to chapter 23-3. The term "deputy county sheriff," does not include jailers or clerks appointed pursuant to §§ 7-12-9 and 7-12-10 unless the participating unit has requested that the jailer be considered as a deputy county sheriff and the Board of Trustees has approved the request;
- (26) "Disability" or "disabled," any medically determinable physical or mental impairment that prevents a member from performing the member's usual duties for the member's employer, even with accommodations, or performing the duties of a comparable level position for the member's employer. The term excludes any condition resulting from willful, self-inflicted injury;

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- (26A) “Effective date of retirement,” the first day of the month in which retirement benefits are payable pursuant to § 3-12-90;
- (27) “Effective rate of interest,” interest at an annually compounded rate to be established by the board for each fiscal year. The rate shall be no greater than ninety percent of the average ninety-one day United States treasury bill rate for the immediately preceding calendar year and in no event may the rate be more than the rate established by the board pursuant to § 3-12-121 for investment return for purposes of the actuarial valuation. If a member withdraws contributions pursuant to § 3-12-76, 3-12-76.1, or 3-12-77, or if benefits are payable under § 3-12-110, the interest shall be as annually compounded on the preceding June thirtieth. With respect to amounts due the system under §§ 3-12-69, 3-12-69.3, 3-12-80, 3-12-83 and 3-12-84, the effective rate of interest shall be the assumed rate of return;
- (28) “Eligible retirement plan,” the term eligible retirement plan includes those plans described in section 402(c)(8)(B) of the Internal Revenue Code;
- (29) “Eligible rollover distribution,” any distribution to a member of accumulated contributions pursuant to §§ 3-12-76 and 3-12-76.1. The term does not include any portion of a distribution that represents contributions made to the system on an after tax basis nor distributions paid as a result of the member reaching the required beginning date;
- (30) “Employer,” the State of South Dakota and any department, bureau, board, or commission thereof, or any of its governmental or political subdivisions or any public corporation of the State of South Dakota which elects to become a participating unit;
- (31) “Employer contributions,” amounts contributed by the employer of a contributing member, excluding member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71;
- (32) Repealed by SL 2004, ch 41, § 6.

- (32A) "Equivalent public service," any public service other than as a justice, a judge, or a magistrate judge and comparable to class B service as defined by this section, if the service is in the employ of a public entity that is not a participating unit;
- (33) "Fiduciary," any person who exercises any discretionary authority or control over the management of the system or the management or disposition of its assets, renders investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so, or has any discretionary authority or responsibility in the administration of the system;
- (34) "Final average compensation," the highest average annual compensation earned by a member during any period of twelve consecutive calendar quarters during the member's last forty calendar quarters of membership in the system including time during which the member was not a member but for which he has received credit under the system. If the compensation received in the last calendar quarter considered exceeds a set percentage of the amount in the highest previous calendar quarter, or if the average compensation received in the last four calendar quarters exceeds a set percentage of the amount earned in the highest calendar quarter prior to the last four calendar quarters considered, only the lesser amount shall be considered and the excess shall be excluded in the computation of final compensation. Those respective set percentages are as follows:
- (a) On or before June 30, 2004, one hundred twenty-five percent and one hundred fifteen percent;
  - (b) Between July 1, 2004, and June 30, 2005, one hundred fifteen and one hundred ten percent; and
  - (c) On or after July 1, 2005, one hundred five percent and one hundred five percent.

For purposes of determining final compensation periods for service separated by breaks, the service may be aggregated to constitute a period of twelve consecutive calendar quarters. The term calendar quarter means a

period of three calendar months ending March thirty-first, June thirtieth, September thirtieth or December thirty-first of any year;

- (35) "Firefighter," any full-time firefighter who works at least twenty hours a week and at least six months a year. The term does not include any volunteer firefighter;
- (36) "Full-time student," a person who is in full-time attendance as a student at an educational institution, as determined by the board in light of the standards and practices of the institution involved, except that no individual shall be considered a full-time student, if he is paid by his employer while attending such an educational institution at the request of, or pursuant to a requirement of, his employer;
- (37) "Fund," public employees retirement fund or funds established for the purposes of administration of this chapter;
- (38) "Funded ratio," the actuarial value of assets divided by the actuarial accrued liability;
- (39) "General employees," full-time municipal employees who are not firefighters or police officers;
- (39A) "Health care provider," a physician or other health care practitioner licensed, registered, certified, or otherwise authorized by law to provide specified health services;
- (40) "Highest annual compensation," a member's compensation used to calculate benefits under §§ 3-12-95, 3-12-99 and 3-12-105 prior to July 1, 2004, which was the highest annual compensation earned by the member during any one of the last three years of contributory service and which was not more than one hundred fifteen percent of the member's final compensation calculated as of the date of the member's death or disability;
- (41) "Improvement factor," the annual increase in the amount of the benefit allowance commencing on the July first in the year after the member has received benefit payments for at least a twelve-month period,

compounded annually. The improvement factor effective July 1, 2010, shall be two and one-tenth percent. Beginning July 1, 2010, the annual increase shall be established by the board for each fiscal year, in part on the basis of the increase in the consumer price index for the preceding third calendar quarter compared to the consumer price index for the third calendar quarter for the base year (the past year in which the consumer price index was the highest), as follows:

- (a) If the system's market value funded ratio is less than eighty percent, the improvement factor shall be two and one-tenth percent;
  - (b) If the system's market value funded ratio is eighty percent or greater but less than ninety percent, the improvement factor shall be the increase in the consumer price index, but no less than two and one-tenth percent or no greater than two and four-tenths percent;
  - (c) If the system's market value funded ratio is ninety percent or greater but less than one hundred percent, the improvement factor shall be the increase in the consumer price index, but no less than two and one-tenth percent or no greater than two and eight-tenths percent; or
  - (d) If the system's market value funded ratio is one hundred percent or greater, the improvement factor shall be three and one-tenth percent;
- (41A) "Internal Revenue Code," or "code," the Internal Revenue Code as in effect as of January 1, 2015;
  - (42) "Law enforcement officer," an agent of the state division of criminal investigation, an officer of the South Dakota Highway Patrol, a police officer, county sheriff, deputy county sheriff, or a firefighter;
  - (42A) "Market value of assets," the total assets of the system at fair market value;
  - (42B) "Market value funded ratio," the market value of assets divided by the actuarial accrued liability;
  - (43) "Member," any person who is participating in and has made contributions to the system. A person is no longer

a member if he withdraws his contributions at termination of employment;

- (44) "Member contributions," amounts contributed by members, including member contributions made by an employer on or after July 1, 1984, pursuant to § 3-12-71;
- (44A) "Military service," a period of active duty with the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, or the United States Coast Guard, from which duty the member received an honorable discharge or an honorable release;
- (45) "Municipality," any incorporated municipal government under chapter 9-3 or any chartered governmental unit under the provisions of Article IX of the Constitution of the State of South Dakota;
- (46) Repealed by SL 2004, ch 42, § 8.
- (46A) "Normal cost," the expected long-term cost of the system benefits and expenses expressed as a percentage of payroll;
- (47) "Normal retirement," the termination of employment and application for benefits by a member with three or more years of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of § 3-12-47(24) on or after the member's normal retirement age;
- (48) "Normal retirement age," age sixty-five for Class A credited service and for Class B credited service as a justice, judge and magistrate judge and age fifty-five for other Class B credited service;
- (49) "Other public benefits," eighty percent of the primary insurance amount or primary social security benefits that would be provided under federal social security;
- (49A) "Other public service," service for the government of the United States, including military service; service for the government of any state or political subdivision thereof; service for any agency or instrumentality of any of the foregoing; or service as an employee of an association of government entities described in this subdivision;

- (50) "Park rangers," employees of the Department of Game, Fish and Parks within the Division of Parks and Recreation and whose positions are subject to the requirements as to education and training provided in chapter 23-3 and whose primary duty is law enforcement in the state park system;
- (51) "Parole agent," employees of the Department of Corrections employed pursuant to § 24-15-14 who are actually involved in direct supervision of parolees on a daily basis;
- (52) "Participating unit," the State of South Dakota and any department, bureau, board, or commission thereof, and any of its political subdivisions or any public corporation of the State of South Dakota which has employees who are members of the retirement system created in this chapter;
- (53) "Penitentiary correctional staff," the warden, deputy warden, and any other correctional staff holding a security position as determined by the Department of Corrections and approved by the Bureau of Human Resources and the Bureau of Finance and Management. For purposes of administration of this chapter final determination of penitentiary correctional staff as Class B members shall be made by the board of trustees based on the recommendation of the Department of Corrections, Bureau of Human Resources, and the Bureau of Finance and Management;
- (54) "Permanent full-time employee," those employees who have been placed in a permanent classification who are customarily employed by a participating unit for twenty hours or more a week and at least six months a year. The participating unit shall decide if an employee is a permanent full-time employee and that decision is conclusive;
- (54A) "Plan year," a period extending from July first of one calendar year through June thirtieth of the following calendar year;
- (55) "Police officer," any employee in the police department of any participating municipality holding the rank of

patrol officer, including probationary patrol officer, or higher rank and whose position is subject to the minimum educational and training standards established by the law enforcement officers standards commission pursuant to chapter 23-3. The term, police officer, does not include civilian employees of a police department nor any person employed by a municipality whose services as a police officer require less than twenty hours a week and six months a year. If a municipality which is a participating unit operates a city jail, the participating unit may request that any jailer appointed pursuant to § 9-29-25 be considered a police officer, subject to the approval of the board;

- (56) "Political subdivision" includes but is not limited to municipalities, school districts, counties, chartered governmental units, any public corporation or entity, and any special districts created for any governmental function;
- (56A) "Present value of all benefits," the present value of all benefits expected to be paid to all retired, terminated, and active members and beneficiaries, based on past and future credited service and future compensation increases.
- (57) "Present value of benefits earned to date," the present value of the benefits currently being paid to retired members and their beneficiaries and the present value of benefits payable at retirement to active members, based on their earnings and credited service to date of the actuarial valuation;
- (58) "Projected compensation," a deceased or disabled member's final average compensation multiplied by the improvement factor commencing each July first for each complete twelve-month period elapsed between the date of the member's death or disability, whichever occurred earlier, and the date the member would attain normal retirement age;
- (59) "Projected service," the credited service plus the service which the member would have been credited with at his normal retirement age had he continued in the system

- and received credit at the same rate he was credited during the year covered by the compensation that was used in the calculation of the disability or family benefit;
- (59A) “Qualified military service,” service in the uniformed services as defined in § 414(u)(5) of the Internal Revenue Code;
- (60) “Reduction age,”
- (a) For Class A credited service, the age at which the sum of the member’s age and credited service equals eighty-five. However, the reduction age may not be less than fifty-five for Class A credited service;
  - (b) For Class B credited service as a justice, judge, or magistrate judge, the age at which the sum of the member’s age and credited service equals eighty. The reduction age may not be less than fifty-five for Class B credited service as a justice, judge, or magistrate judge;
  - (c) For Class B credited service other than as a justice, judge or magistrate judge, the age at which the sum of the member’s age and credited service equals seventy-five. The reduction age for Class B credited service other than as a justice, judge, or magistrate judge may not be less than forty-five;
- (61) “Required beginning date,” the later of April first of the calendar year following the calendar year in which the member attains age seventy and one-half or April first of the calendar year following the calendar year in which the member retires;
- (62) “Retiree,” any member who retires with an annuity payable from the system;
- (63) “Retirement,” the severance of a member from the employ of a participating unit with a retirement allowance payable from the system;
- (64) “Retirement allowance,” the benefits that are payable upon the retirement of a member;
- (64A) “Single premium,” the lump-sum amount paid by a supplemental pension participant pursuant to a supplemental pension contract in consideration for a supplemental pension benefit;

- (64B) “Social investment,” investment, divestment, or prohibition of investment of the assets of the system for purposes other than maximum risk-adjusted investment return, which other purposes include ideological purposes, environmental purposes, political purposes, religious purposes, or purposes of local or regional economic development;
- (65) “Spouse,” a person who was married to the member at the time of the death of the member and whose marriage was both more than twelve months prior to the death of the member and prior to the member’s retirement;
- (66) “State employees,” employees of the departments, bureaus, commissions, and boards of the State of South Dakota;
- (66A) “Supplemental pension benefit,” any single-premium immediate pension benefit payable pursuant to §§ 3-12-192 and 3-12-193;
- (66B) “Supplemental pension contract,” any agreement between a participant and the system upon which a supplemental pension is based, including the amount of the single premium, the type of pension benefit, and the monthly supplemental pension payment amount;
- (66C) “Supplemental pension contract record,” the record for each supplemental pension participant reflecting relevant participant data; a designation of any beneficiary, if any; the amount of the participant’s funds rolled into the fund; the provisions of the participant’s supplemental pension contract; and supplemental pension payments made pursuant to the contract;
- (66D) “Supplemental pension participant,” any retiree receiving a benefit from the system who chooses to purchase a supplemental pension benefit pursuant to the provisions of this chapter;
- (66E) “Supplemental pension spouse,” any person who was married to a supplemental pension participant at the time the participant entered into the supplemental pension contract;

- (67) "System," the South Dakota Retirement System created in this chapter;
- (68) "Tax-qualifying purchase unit," any participating unit which elects to allow the unit's employees to purchase credited service on a tax-deferred basis by means of employer contribution agreements as outlined in §§ 3-12-83.1 and 3-12-83.2;
- (69) "Teacher," any person who has a valid teacher's certificate issued by the State of South Dakota, who is in the employ of a public school district, and shall also include the certified teachers employed by the Human Services Center, South Dakota Developmental Center—Redfield, State Penitentiary, Department of Education, State Training School, School for the Deaf, School for the Blind and the Visually Impaired, Children's Care Hospital and School, public nonprofit special education facilities, community support providers certified by the Department of Human Services and public financed multi-district education programs;
- (70) "Terminated," complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member's participating unit, including payment to the member for unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of employer-provided health insurance coverage, severance of employer-provided life insurance coverage, or severance of any other such employer-provided perquisite of employment granted by the member's participating unit to an active employee;
- (71) "Trustee," a member of the board of trustees;
- (72) "Unfunded actuarial accrued liability," the actuarial accrued liability less the actuarial value of assets;
- (73) "Vested," the right to a retirement annuity from the system based on the provisions of this chapter after three years of contributory service or noncontributory

service as delineated in subsections (b), (e), (g) and (h) of § 3-12-47(24), even if the member leaves the employment of a participating unit, provided that the member does not withdraw accumulated contributions. A member who leaves the employment of a participating unit is not entitled to benefits under §§ 3-12-95, 3-12-98, 3-12-99, 3-12-104, and 3-12-105.

**Source:** SL 1967, ch 303, § 2; SDCL § 3-12-2; SL 1968, ch 216, § 1; SL 1970, ch 25, § 1; SL 1973, ch 24, §§ 1, 2; SL 1974, ch 35, § 2; SL 1975, ch 38, § 6; SL 1975, ch 39, §§ 2, 3; SL 1976, ch 40, § 1; SL 1977, ch 28, §§ 1 to 3; SL 1977, ch 29; SL 1977, ch 31, §§ 1 to 3; SL 1978, ch 31; SL 1978, ch 32, § 5; SL 1979, ch 26, § 1; SL 1980, ch 31, § 1; SL 1982, ch 32, § 1; SL 1982, ch 33; SL 1982, ch 34, § 1; SL 1982, ch 35; SL 1983, ch 17; SL 1983, ch 18; SL 1983, ch 19, §§ 1, 2; SL 1983, ch 22, § 2; SL 1984, ch 23, § 1; SL 1985, ch 24, §§ 1, 2; SL 1986, ch 37, §§ 1-3, 11; SL 1987, ch 35; SL 1987, ch 36, §§ 1, 2; SL 1988, ch 30, §§ 1 to 3; SL 1988, ch 31; SL 1989, ch 21, § 40; SL 1989, ch 38, §§ 5, 9; SL 1989, ch 238, § 3; SL 1990, ch 36; SL 1991, ch 29, §§ 1, 2; SL 1991, ch 30; SL 1992, ch 30, § 1; SL 1992, ch 34, §§ 1, 2; SL 1993, ch 38, §§ 1, 2; SL 1993, ch 39, § 1; SL 1993, ch 40; SL 1993, ch 41; SL 1993, ch 42, §§ 1-3; SL 1993, ch 44, §§ 2, 3; SL 1994, ch 32, §§ 1, 2; SL 1994, ch 34, §§ 1, 2; SL 1995, ch 18, §§ 1, 2, 4; SL 1995, ch 23, § 1; SL 1995, ch 24, §§ 1, 11, 15; SL 1996, ch 29, § 1; SL 1996, ch 30, §§ 1, 5; SL 1997, ch 25, § 1; SL 1997, ch 26, § 1; SL 1997, ch 27, § 1; SL 1998, ch 15, §§ 1, 2, 3, 4, 5; SL 1998, ch 16, § 1; SL 1998, ch 17, § 1; SL 1998, ch 17, § 2; SL 1998, ch 18, § 1; SL 1998, ch 19, § 1; SL 1998, ch 110, § 2; SL 1999, ch 14, §§ 1, 2; SL 1999, ch 15, § 1; SL 2000, ch 24, §§ 1, 2; SL 2002, ch 22, §§ 1, 2; SL 2004, ch 35, § 1; SL 2004, ch 36, §§ 1, 2; SL 2004, ch 37, §§ 1, 2; SL 2004, ch 38, § 7; SL 2004, ch 40, §§ 5 to 7; SL 2004, ch 42, §§ 3 to 11; SL 2005, ch 24, §§ 1, 2; SL 2006, ch 17, § 1; SL 2008, ch 20, §§ 1 to 6; SL 2008, ch 21, § 1; SL 2008, ch 24, § 2; SL 2009, ch 138, § 3; SL 2010, ch 20, §§ 1 to 6; SL 2010, ch 21, § 2; SL 2010, ch 23, §§ 3, 4, eff. Apr. 1, 2010; SL 2010, ch 77, § 2; SL 2011, ch 1 (Ex. Ord. 11-1), § 18, eff. Apr. 12, 2011; SL 2011, ch 20, § 1; SL 2012, ch 26, §§ 1 to 6; SL 2013, ch 20, §§ 2 to 5; SL 2014, ch 18, § 1; SL 2014, ch 20, §§ 19 to 22; SL 2014, ch 21, §§ 8, 9 eff. Apr. 1, 2014; SL 2015, ch 25, §§ 1 to 3.

#### Commission Note

Chapter 3-6A referred to in subd. (19) was repealed by SL 2012, ch 23, § 10. See chapters 3-6C and 3-6D.

#### Historical and Statutory Notes

SL 1993, ch 39, § 1A provided that changes in the definition of compensation pursuant to SL 1993, ch 39, § 1 do not apply to compensation received pur-

suant to contracts entered into and effective prior to January 1, 1993.

SL 1998, ch 17, § 4, provided that application of the improvement factor as amended in section 1 of that Act applies only to benefits first payable after July 1, 1998.

SL 2010, ch 23, § 10 provided that "Whereas, this Act is necessary for the support of the state government and its

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existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010.”

SL 2014, ch 21, § 13 provided that “Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014.”

### Administrative Code References

Application of chapter 62:01:04, see S.D. Admin. R. 62:01:04:00.

Certification when retired member becomes reemployed, see S.D. Admin. R. 62:01:03:02.01.

Criteria for determining disability, see S.D. Admin. R. 62:01:04:09, 62:01:04:09.01.

No increase in value of single premium, see S.D. Admin. R. 62:01:09:05.

Participant defined, see S.D. Admin. R. 62:01:09:01.

Participant’s status as a retiree, see S.D. Admin. R. 62:01:09:06.

Permanent full-time employee, probationary period, see S.D. Admin. R. 62:01:02:04.

Retirement definitions, see S.D. Admin. R. 62:01:01:01.

Special pay retirement program definitions, see S.D. Admin. R. 62:04:01:01.

### Notes of Decisions

#### Benefits 1

#### Class B members 2

#### Compensation 3

#### Credited service 4

#### Disability 5

#### Fiduciary 6

#### 1. Benefits

Terms “benefit” and “benefits” in the retirement provisions of parties’ divorce settlement agreement was not ambiguous, and, thus, trial court was not warranted in finding there was never any agreement on division of husband’s retirement fund and determining wife’s entitlement to portion of the fund outside contractual provision within the agreement; although word “benefit” was not described within the agreement, statute governing South Dakota

Retirement System allowed husband upon retiring from system to claim his retirement “benefits” in the form of a monthly payment, which he did, and provision in settlement agreement entitled wife to benefits whenever husband should draw on his benefits. SDCL 3–12–47(11), 3–12–112. *Divich v. Divich*, 640 N.W.2d 758, 2002 S.D. 24. Divorce ⇌ 925

#### 2. Class B members

Division of criminal investigation agents assigned to the drug unit are class B members, because they are given law enforcement authority. Op.Atty. Gen. Opinion No. 80-28, 1980 WL 119203.

#### 3. Compensation

Retirement bonus, either as lump sum or in installments, is not “compensation” as defined in subdivision (20) of this section. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

#### 4. Credited service

Retirement bonus acceptance in installments does not entitle member to additional credited service beyond his retirement date. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

Where employee received credit under 1967 act for prior service which gave him a vested right in portion of benefits, he was not deprived of the vested right by amendment under which his prior service did qualify for credit. Op.Atty.Gen. Opinion No. 80-39, 1980 WL 119214.

#### 5. Disability

State Retirement System Board’s decision to deny disability benefits to employee, formerly employed in plumbing and heating maintenance at state college prior to injury to right shoulder, based on employee’s ability to perform duties of administering preventative maintenance planning program on campus was both clearly erroneous and arbitrary and capricious, where preventative maintenance position was merely part time and employee received less

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than one half remuneration he received prior to his injury, so that position was not of comparable level, and where employee was not qualified by education, training, and experienced to perform necessary duties of preventative maintenance position. SDCL 3-12-46 et seq., 3-12-47(18). Appeal of Templeton, 1987, 403 N.W.2d 398. States ⇌ 64.1(3)

Board's finding that 61-year-old school board employee, who had worked as teacher, assistant principal, and principal and who due to absences caused by illness was reassigned as teacher but her contract was not renewed because her excessive absences were disruptive, was not entitled to disability benefits was not sustained by "substantial evidence." SDCL 3-12-46 et seq., 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Education ⇌ 551

Statute defining disability for purposes of state retirement system should be read to require member seeking disability benefits to first satisfy the test of inability to perform usual duties and then satisfy the test of performance of duties of the position of comparable level. SDCL 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Education ⇌ 544

Record established that school employee who had served as teacher, assistant principal and principal and who had been transferred to teacher duties because of absenteeism due to illness and whose contract as teacher was not

renewed was entitled to disability benefits. SDCL 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Education ⇌ 551

### 6. Fiduciary

As a fiduciary, Board of Trustees of state Retirement System had a duty to act in the highest good faith and to refrain from obtaining any undue advantage over members. SDCL 3-12-47(33). *O'Toole v. Board of Trustees of South Dakota Retirement System*, 648 N.W.2d 342, 2002 S.D. 77. States ⇌ 64.1(1)

When a member's request can be decided by the Board of Trustees of state Retirement System in one of several ways, each authorized by statute, the Board's decision must be consistent with its fiduciary duty to that member; if one decision would be consistent with Board's fiduciary duties but a second decision would not be, and Board makes the second decision, it is proper for the circuit court, on appeal, to review the Board's decision in light of the Board's fiduciary duty to the member. SDCL 3-12-47(33). *O'Toole v. Board of Trustees of South Dakota Retirement System*, 648 N.W.2d 342, 2002 S.D. 77. States ⇌ 64.1(1); States ⇌ 64.1(7)

In dealing with a member, Board of Trustees of state Retirement System had a duty to act primarily for the benefit of the member. SDCL 3-12-47(33). *O'Toole v. Board of Trustees of South Dakota Retirement System*, 648 N.W.2d 342, 2002 S.D. 77. States ⇌ 64.1(1)

### 3-12-47.1. Effect of credited service provision

Any increase in a retired member's benefit as a result of the provisions of the 1997 amendment to subdivision 3-12-47(24) shall be prospective only from July 1, 1997.

**Source:** SL 1997, ch 25, § 2.

#### Library References

Officers and Public Employees  
⇌101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

**3–12–47.2. Refund for purchase cost of noncontributing service**

Any member who, pursuant to the provisions of § 3–12–83, has purchased a portion or all of the member's noncontributory service described in subsection (h) of subdivision § 3–12–47(24) is entitled to a refund of such purchase cost.

**Source:** SL 1997, ch 25, § 3.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3–12–47.3. Date of application of prorated payment of interest**

Application of prorated payment of interest applies only to amounts which were first payable after July 1, 1998, but prior to July 1, 2010.

**Source:** SL 1998, ch 16, § 2; SL 2010, ch 20, § 7.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3–12–47.4. Date of application of prorated payment of improvement factor**

Application of prorated payment of the improvement factor applies only to benefits which were first payable after July 1, 1998, but prior to July 1, 2010.

**Source:** SL 2010, ch 20, § 8.

**3–12–48. Board of Trustees created—Composition**

There is created a governing authority of the system to consist of a board known as the Board of Trustees. Voting representation on the board shall be the following:

- (1) Two state employee members;
- (2) Two teacher members;
- (3) A participating municipality member;

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- (4) A participating county member;
- (5) A participating classified employee member;
- (6) A current contributing Class B member other than a justice, judge, or magistrate judge;
- (7) A justice, judge, or magistrate judge;
- (8) One head of a principal department established pursuant to § 1-32-2, or one head of a bureau under the Department of Executive Management established pursuant to § 1-33-3 appointed by the Governor;
- (9) An individual appointed by the Governor;
- (10) A county commissioner of a participating county;
- (11) A school district board member;
- (12) An elected municipal official of a participating municipality;
- (13) A retiree; and
- (14) A faculty or administrative member employed by the Board of Regents and not subject to the provisions of chapter 3-6A.

A representative of the State Investment Council shall serve as an ex officio nonvoting member.

**Source:** SL 1967, ch 303, § 3; SDCL § 3-12-4; SL 1968, ch 216, § 1; SL 1973, ch 25; SL 1974, ch 35, § 3; SL 1975, ch 38, § 7; SL 1976, ch 39, § 8; SL 1977, ch 28, § 4; SL 1979, ch 27, § 1; SL 1994, ch 33.

**Commission Note**

Chapter 3-6A referred to in subd. (14) was repealed by SL 2012, ch 23, § 10. See chapters 3-6C and 3-6D.

**Library References**

States 45, 48.  
Westlaw Topic No. 360.  
C.J.S. States §§ 88, 145 to 150, 152, 157 to 161, 249.

**Notes of Decisions**

**Voting rights 1**

**1. Voting rights**

Acting commissioner of personnel has vote at board of trustees meetings. Op. Atty.Gen. Opinion No. 77-47, 1977 WL 35985.

**3-12-49. Election of trustees—Terms of office**

Each group of retirement system members who are vested or are currently contributing or employers as set out in § 3-12-48 shall elect their own trustee or trustees in a separate election. The trustees shall promulgate rules and regulations pursuant to

chapter 1-26 to carry out the elections. The regular term of office of a trustee shall be four years with three terms expiring on June thirtieth of each year and two additional terms to expire on June thirtieth every fourth year. The appointees of the Governor shall serve at the pleasure of the Governor. The term of the representative of the Investment Council shall be one year and the representative shall be appointed by the Investment Council. Unless a trustee has resigned, is deemed to have resigned pursuant to § 3-12-53, or has died, the trustee shall continue to serve until the trustee's successor has been designated and has qualified.

**Source:** SL 1959, ch 84, § 6; SDC Supp 1960, § 15.3910; SL 1961, ch 255, §§ 5, 6; SL 1965, ch 220, §§ 5, 6; SL 1967, ch 303, § 3; SDCL §§ 3-12-4, 9-15-4 (5), 9-15-5, 13-45-9; SL 1968, ch 216, § 1; SL 1970, ch 106, § 1; SL 1973, ch 25; SL 1974, ch 35, §§ 5 to 7; SL 1976, ch 41; SL 1977, ch 28, § 14; SL 1979, ch 27, § 2; SL 2011, ch 21, § 1.

#### Administrative Code References

Election of board of trustees, see S.D. Admin. R. 62:01:05:01 et seq.  
 Procedure for filling a vacancy on the board, see S.D. Admin. R. 62:01:07:05.

#### Library References

States ⚡46.  
 Westlaw Topic No. 360.  
 C.J.S. States §§ 88, 158 to 161, 163 to 165, 195.

### 3-12-50. Oath of office of trustees

Each trustee within ten days after his appointment or election shall take and file in the Office of the Secretary of State the oath required by § 3-1-5.

**Source:** SL 1959, ch 84, § 7; SDC Supp 1960, § 15.3911; SL 1961, ch 255, § 8; SL 1967, ch 303, § 3; SDCL §§ 3-12-5, 9-15-8, 13-45-10; SL 1968, ch 216, § 1; SL 1974, ch 35, § 8.

#### Library References

States ⚡48.

Westlaw Topic No. 360.  
 C.J.S. States §§ 88, 147 to 150, 152.

### 3-12-51. Compensation and expenses of trustees

The trustees shall receive per diem compensation and allowable expenses for their services as trustees as are fixed pursuant to § 4-7-10.4.

**Source:** SL 1967, ch 303, § 3; SDCL § 3-12-6; SL 1968, ch 216, § 1; SL 1974, ch 35, § 9.

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### Library References

States ⚡60.1(1), 62.  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 101 to 102, 196 to  
198, 201 to 205.

### 3-12-52. Meetings of board—Chair and vice chair—Votes re- quired for decision

The Board of Trustees shall meet at least twice each year, and shall adopt its own rules of procedure. A majority of trustees constitutes a quorum. At the first meeting of each fiscal year the board shall elect from the board's membership a chair and a vice chair. At least eight concurrent votes are required for a decision by the board for any of its meetings.

**Source:** SL 1959, ch 84, §§ 9, 10; SDC Supp 1960, §§ 15.3913, 15.3914; SL 1961, ch 255, §§ 9 (a), 10; SL 1963, ch 285; SL 1965, ch 220, §§ 7, 8; SL 1967, ch 303, § 3 (1), (2); SDCL §§ 3-12-7, 3-12-8, 9-15-10, 9-15-17, 13-45-13, 13-45-14; SL 1968, ch 216, § 1; SL 1974, ch 35, § 10; SL 2012, ch 26, § 7.

### Cross References

Meetings of public agencies, public  
access, see § 1-25-1 et seq.

Westlaw Topic No. 360.

C.J.S. States §§ 224 to 227, 249 to  
251, 253.

### Library References

States ⚡67.

### 3-12-53. Resignation of trustee due to loss of qualifying sta- tus—Filling of vacancy

If an employee trustee ceases to be a member, or any nonem-  
ployee elected trustee no longer serves in the capacity that  
qualified the trustee for membership on the Board of Trustees,  
the trustee is considered to have resigned from the board, and  
the board shall select a replacement trustee to serve for the  
remainder of the term.

**Source:** SL 1959, ch 84, § 8; SDC Supp 1960, § 15.3912; SL 1961, ch  
255, § 7; SDCL §§ 9-15-6, 13-45-12; SL 1970, ch 106, § 2; SL 1974, ch  
35, § 11; SL 1982, ch 32, § 2; SL 2011, ch 21, § 2.

### Administrative Code References

Procedure for filling a vacancy on the  
board, see S.D. Admin. R. 62:01:07:05.

Westlaw Topic No. 360.

C.J.S. States §§ 154, 175, 178 to 182,  
184 to 195.

### Library References

States ⚡52.

**3-12-54. System managed by board—Standard of conduct—  
Legal advice**

The system shall be under the Board of Trustees. The Board of Trustees shall be held to the standard of conduct of a fiduciary and shall carry out its functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The system may not engage in any activity that is not solely designed to provide for the exclusive benefit of the members and benefit recipients of the system. The attorney general is the legal adviser to the board.

**Source:** SL 1967, ch 303, § 3; SDCL § 3-12-4; SL 1968, ch 216, § 1; SL 1973, ch 2, § 22 (a) to (d); SL 1973, ch 25; SDCL Supp, §§ 3-12-4.1, 3-13-4.1, 13-45-8.1, 16-8-7.1; SL 1974, ch 35, § 12; SL 1979, ch 27, § 3; SL 1992, ch 30, § 2; SL 2010, ch 21, § 1.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3-12-55. Appointment and term of administrator—Salary—  
Employment of personnel—Bond of administrator**

The Board of Trustees shall appoint an administrator, qualified by training and experience, to serve at the pleasure of the Board of Trustees. The annual salary of the administrator may be adjusted annually by the same rate appropriated as the across-the-board increase to base salaries of state employees under the General Appropriations Act in each corresponding year.

Before May first of each year, the board shall recommend any additional salary adjustment above the across-the-board increase for the administrator for the upcoming fiscal year. This salary adjustment is not effective unless it is approved by a majority vote of the members of the Retirement Laws Committee. The administrator may hire additional employees as may be required to transact the business of the retirement system and shall fix the remuneration for such services. The board shall require the bonding of the administrator in an amount set

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by the board which shall be included under the state employees' blanket bond. The premium may be charged to the fund.

**Source:** SL 1967, ch 303, § 3 (4), (5); SDCL §§ 3-12-9, 3-12-10; SL 1968, ch 216, § 1; SL 1974, ch 35, § 13; SL 1979, ch 27, § 4; SL 1980, ch 32; SL 1995, ch 17; SL 1998, ch 20, § 1.

### Cross References

Official bonds of state employees, blanket or individual bonds, see § 3-5-5.1.

Westlaw Topic No. 360.

C.J.S. States §§ 88 to 89, 147 to 150, 152, 158 to 161, 163 to 165, 195 to 198, 203 to 204, 207.

### Library References

States Ⓔ46 to 48, 63.

## 3-12-56. Applications to administrator for membership or benefits

Applications for membership for new or additional benefits, credited service, or benefit payments which may be granted by the Board of Trustees shall be made to the administrator on forms approved by the board.

**Source:** SL 1974, ch 35, § 14.

### Administrative Code References

Determination of eligibility for retirement allowance, see S.D. Admin. R. 62:01:03:02.

### Library References

Officers and Public Employees Ⓔ101.5(2).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 422, 431 to 432.

### Notes of Decisions

Refund requests 1

### 1. Refund requests

Board of Trustees of state Retirement System had statutory authority to consider and decide members' requests for refunds, and thus, former members' requests for a refund of employer contributions was fully within the scope of System Administrator's statutory authority to make a determination. SDCL 3-12-56, 3-12-57, 3-12-58. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 S.D. 77. States Ⓔ 64.1(4)

## 3-12-57. Repealed by SL 2008, ch 22, § 2

### Historical and Statutory Notes

The repealed section, which related to approval of applications by the administrator and forwarding of questionable

applications to the board, was derived from SL 1974, ch 35, § 14; SL 1980, ch 26, § 17.

## 3-12-57.1. Grievance procedure—Administrative and judicial review

Any person aggrieved by a determination made by the system's staff may request review of the determination and a

decision by the administrator. The person, if then aggrieved by the administrator's decision, may appeal the decision, if the person files a written notice of appeal with the administrator within thirty days of the date of the decision. The notice shall identify the person appealing and the decision appealed. The appeal shall be conducted by a hearing examiner in accordance with chapter 1–26. The hearing examiner, after hearing the evidence in the matter, shall make proposed findings of fact and conclusions of law, and a proposed decision. The administrator shall accept, reject, or modify those findings, conclusions, and decision. The administrator may arrange for the assistance of private counsel throughout the administrator's review of the proposal. The administrator's action constitutes the final agency decision. The final agency decision may be appealed to circuit court pursuant to chapter 1–26.

**Source:** SL 2008, ch 22, § 1.

**Administrative Code References**

Declaratory rulings, time limit, hearing examiners, see S.D. Admin. R. 62:01:06:07.

Distributions, unforeseeable emergency, see S.D. Admin. R. 62:03:05:06.

Finality of decision if the administrator does not act, time limit, see S.D. Admin. R. 62:01:06:05.

Waiver of privilege against disclosure of information, see S.D. Admin. R. 62:01:07:03.

Written rationale for rejection or modification of a decision or findings, time limit, see S.D. Admin. R. 62:01:06:06.

**Library References**

Officers and Public Employees  
 ⇨101.5(2).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 422, 431 to 432.

**3–12–58. Rules for administration**

The Board of Trustees may adopt such rules as may be necessary to establish uniform procedures for the administration of the system and to insure uniformity of application of the provisions of this chapter. Such rules may be adopted in the following areas:

- (1) Membership and class of membership;
- (2) Contributions and the collection thereof;
- (3) Criteria and procedures for the determination of applications for, and payment of disability allowances;
- (4) Procedure for applications for benefits and the payment of benefits;

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- (5) Election of trustees; and
- (6) Procedure for the conduct of meetings of the board.

The rules shall be adopted pursuant to chapter 1-26 and shall be in accordance with the provisions of this chapter.

**Source:** SL 1967, ch 303, § 3 (9); SDCL § 3-12-11; SL 1968, ch 216, § 1; SL 1974, ch 35, § 15; SL 1983, ch 22, § 1.

### **Administrative Code References**

State retirement system, see S.D. Admin. R. 62:01:01:01 et seq.

### **Library References**

Officers and Public Employees  
⊞101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### **Notes of Decisions**

**Refunds** 1

### **1. Refunds**

Board of Trustees of state Retirement System had statutory authority to consider and decide members' requests for refunds, and thus, former members' requests for a refund of employer contributions was fully within the scope of System Administrator's statutory authority to make a determination. SDCL 3-12-56, 3-12-57, 3-12-58. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 S.D. 77. States ⊞ 64.1(4)

## **3-12-58.1. Confidentiality of records—Exceptions**

Any information contained in any record pertaining to a member of the system is confidential and shall be used for the sole purpose of carrying into effect the provisions of this chapter. Any record containing the information is not open to inspection by any person or entity except the member, the board, the employees of the system, or the member's employer. The information and records may be released to the member or with the member's consent. The information and records may also be released pursuant to a court order or subpoena.

**Source:** SL 2002, ch 22, § 5.

### **Administrative Code References**

Waiver of privilege against disclosure of information, see S.D. Admin. R. 62:01:07:03.

### **Library References**

Records ⊞57.  
Westlaw Topic No. 326.  
C.J.S. Records §§ 122, 124, 135, 137.

## **3-12-59. Record of board proceedings—Biennial report**

The Board of Trustees shall keep complete records of their proceedings which shall be open to public inspection. The board shall prepare a biennial written report setting forth its

financial information for the previous fiscal period including the amount of the accumulated cash and securities of the system, and the last actuarial balance sheet. A copy of such report shall be furnished to the fiscal officer of any participating unit, the auditor general, and the director of the Legislative Research Council.

**Source:** SL 1967, ch 303, § 3 (11); SDCL § 3-12-12; SL 1968, ch 216, § 1; SL 1974, ch 35, § 16; SL 1977, ch 28, § 5.

**Cross References**

Public records and files, access by the public, see § 1-27-1 et seq.

Westlaw Topic No. 360.

C.J.S. States § 229.

**Library References**

States ⇐72.

**3-12-60. Business name of system—Treasurer**

The Board of Trustees shall transact all business and hold all cash in the name of the South Dakota Retirement System. The state treasurer shall be the treasurer of the system.

**Source:** SL 1967, ch 303, § 3 (3); SDCL § 3-12-13; SL 1968, ch 216, § 1; SL 1974, ch 35, §§ 1, 17.

**Library References**

Officers and Public Employees  
⇐101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees

§§ 374 to 376, 421 to 430, 433 to 436.

**3-12-61. Expense fund continued—Transfer from retirement system fund—Report of budget—Appropriation and disbursement for expenses**

The South Dakota Retirement System expense fund is hereby continued and the Board of Trustees is hereby authorized to transfer from the South Dakota Retirement System fund an annual amount not to exceed three percent of the annual contributions received by the system, and the moneys so transferred are hereby appropriated for the payment of the administrative costs of the system, provided that the board shall report its proposed annual budget to the Legislature for its approval, within the budget report of the Department of Labor and Regulation. Expenditures from all funds shall be disbursed on warrants drawn by the state auditor and shall be supported by vouchers approved by the administrator of the system.

## § 3-12-61

## PUBLIC OFFICERS AND EMPLOYEES

**Source:** SL 1967, ch 303, § 12; SDCL § 3-12-42; SL 1968, ch 216, § 1; SL 1970, ch 25, § 12; SL 1974, ch 35, § 18; SL 1976, ch 42; SL 2011, ch 1 (Ex. Ord. 11-1), § 33, eff. Apr. 12, 2011.

**Library References**  
States ⌘127, 133.  
Westlaw Topic No. 360.

C.J.S. States §§ 386 to 387, 395, 398  
to 399, 401 to 402.

### 3-12-62. Employees included as members of system

All of the following permanent full-time employees are included as members in the system:

- (1) All state employees;
- (2) All teachers;
- (3) All justices, judges, and magistrate judges;
- (4) All police officers and firefighters of participating municipalities;
- (5) All general employees of participating municipalities;
- (6) All employees of participating counties;
- (7) All classified employees of school districts that are participating with their classified employees;
- (8) All employees of the Board of Regents;
- (9) All state law enforcement officers.

**Source:** SL 1957, ch 142, § 8; SL 1959, ch 84, § 15; SDC Supp 1960, §§ 15.3919 (1), 44.06A08; SL 1961, ch 255, § 17; SL 1963, ch 86, § 1; SL 1965, ch 220, § 13; SL 1967, ch 303, § 4; SDCL §§ 3-12-19, 3-13-12, 9-15-25, 9-15-26, 13-45-21; SL 1968, ch 56, § 1; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-19.2; SL 1974, ch 35, § 19; SL 1975, ch 38, § 8; SL 1976, ch 39, § 7; SL 1981, ch 13, § 1; SL 2012, ch 26, § 8.

#### Cross References

Executive reorganizations, effect on employees' rights, see § 1-32-12.

#### Library References

Officers and Public Employees  
⌘101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

#### Notes of Decisions

##### Participating employees 1

##### 1. Participating employees

When participation in SDMRS is elected by local government, participation for affected employees is mandatory; city may not specify which employees may participate nor terminate participation. Op.Atty.Gen. Opinion No. 81-19, 1981 WL 157027.

**3-12-62.1. Department of Labor and Regulation employees—  
Membership in system—Benefits and credited service**

All personnel hired on or after July 1, 1980, by the divisions of the Department of Labor and Regulation established by §§ 61-2-10 and 61-2-10.1 shall be members of the system. Any individual so employed prior to July 1, 1980, may elect to become a member of the system, if that election is made prior to July 1, 1981. Benefits accrued to a member prior to the date of such election shall be continued and may not be considered as other public benefits, as defined in subdivision 3-12-47(49), for the purposes of calculating or offsetting any benefit resulting from participation in the system. Credited service earned under the retirement system provided by chapter 61-2 may not be counted for the purpose of calculation of benefits under chapter 3-12. For any individual who elects to be a member of the system pursuant to this section, credited service earned under the retirement system provided by chapter 61-2 shall be counted for the purpose of vesting under chapter 3-12 and for the eligibility requirements under §§ 3-12-95 and 3-12-98, provided that contributions made to the system provided under chapter 61-2 are not withdrawn.

**Source:** SL 1980, ch 33, § 2; SL 2011, ch 1 (Ex. Ord. 11-1), § 33, eff. Apr. 12, 2011; SL 2012, ch 26, § 9.

**Commission Note**

Sections 61-2-10 and 61-2-10.1 referred to in this section were repealed by SL 2008, ch 277, §§ 41, 42.

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211 to 213, 216 to 217, 219 to 220.

**Library References**

States ☞64.1(3).

**3-12-62.2. Rapid City firemen—Membership in system—  
Benefits and credited service**

On July 1, 1982, all employees of the municipality of Rapid City who are participants in the municipality of Rapid City firemen pension fund on June 30, 1982, and all retirees receiving benefits from that fund shall become members of the system. Each employee shall receive credited service under the system for all service earned under the municipality of Rapid City firemen pension fund.

## § 3-12-62.2

## PUBLIC OFFICERS AND EMPLOYEES

**Source:** SL 1982, ch 37, § 1; SL 1992, ch 60 § 2.

### **Commission Note**

SL 1992, ch 60 § 2 changed the term "city" to "first class municipality" and "second class municipality" and changed the term "town" to "third class municipality". Section 2 also substituted "municipality" for "city or town" if the class of the municipality was not specified. The Code Commission implemented this act in this section.

### **Library References**

Municipal Corporations Ⓒ200(2).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733, 740 to 744, 752 to 753, 756, 763 to 764.

### **3-12-62.3. Rapid City firemen—Retirement benefits—Normal retirement age**

Upon retirement, each employee described in § 3-12-62.2 shall receive the greater of:

- (1) His retirement allowance calculated under this chapter;  
or
- (2) The retirement allowance calculated under the municipality of Rapid City firemen pension fund based on credited service up to June 30, 1982, and compensation up to June 30, 1982.

The normal retirement age of each such employee shall be fifty-five.

**Source:** SL 1982, ch 37, § 2; SL 1992, ch 60, § 2.

### **Commission Note**

SL 1992, ch 60 § 2 changed the term "city" to "first class municipality" and "second class municipality" and changed the term "town" to "third class municipality". Section 2 also substituted "municipality" for "city or town" if the class of the municipality was not specified. The Code Commission

implemented this act in this section.

### **Library References**

Municipal Corporations Ⓒ200(7).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733, 740, 742 to 744, 752 to 754, 756, 763 to 764.

### **3-12-62.4. Rapid City firemen—Payments from public employees retirement fund**

The benefits of the retirees described in § 3-12-62.2 who are entitled to receive benefits from the municipality of Rapid City firemen pension fund on July 1, 1982, shall be paid from the fund established by this chapter.

**Source:** SL 1982, ch 37, § 3; SL 1992, ch 60, § 2.

**Commission Note**

SL 1992, ch 60 § 2 changed the term “city” to “first class municipality” and “second class municipality” and changed the term “town” to “third class municipality”. Section 2 also substituted “municipality” for “city or town” if the class of the municipality was not specified. The Code Commission implemented this act in this section.

**Library References**

Municipal Corporations Ⓒ200(4).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733, 740, 742 to 744, 752 to 753, 756, 763 to 764.

**3-12-62.5. Rapid City firemen—Payments by Rapid City**

The municipality of Rapid City shall pay to the system an amount equal to the present value of all benefits earned by employees described in § 3-12-62.2 up to July 1, 1982, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1980. That amount shall be determined as of the close of business on July 1, 1982, by the system’s actuary. Any amount to be paid to the system by the municipality of Rapid City which exceeds the value of the assets of the municipality of Rapid City firemen pension fund, determined as of the date of transfer of the assets, may be paid in periodic installments as provided in § 3-12-69.

**Source:** SL 1982, ch 37, § 4; SL 1992, ch 60, § 2.

**Commission Note**

SL 1992, ch 60 § 2 changed the term “city” to “first class municipality” and “second class municipality” and changed the term “town” to “third class municipality”. Section 2 also substituted “municipality” for “city or town” if the class of the municipality was not specified. The Code Commission

implemented this act in this section.

**Library References**

Municipal Corporations Ⓒ200(4).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733, 740, 742 to 744, 752 to 753, 756, 763 to 764.

**3-12-62.6. Rapid City firemen—Crediting of transfers from Rapid City pension fund**

All amounts transferred to the system from the municipality of Rapid City firemen pension fund which, under the fund, were credited to the accounts of individual employees shall be considered employee contributions under this chapter.

### § 3-12-62.6

### PUBLIC OFFICERS AND EMPLOYEES

**Source:** SL 1982, ch 37, § 5; SL 1992, ch 60, § 2.

#### **Commission Note**

SL 1992, ch 60 § 2 changed the term “city” to “first class municipality” and “second class municipality” and changed the term “town” to “third class municipality”. Section 2 also substituted “municipality” for “city or town” if the class of the municipality was not specified. The Code Commission implemented this act in this section.

#### **Library References**

Municipal Corporations Ⓒ200(4).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733, 740, 742 to 744, 752 to 753, 756, 763 to 764.

### 3-12-62.7. Repealed by SL 1989, ch 38, § 6

#### **Historical and Statutory Notes**

The repealed section related to Rapid City firemen hired after July 1, 1982.

### 3-12-62.8. Conservation officers—Calculation of benefits

For purposes of determining the retirement benefits of conservation officers, for credited service earned prior to July 1, 1983, benefits shall be calculated pursuant to § 3-12-91 and for credited service earned after June 30, 1983, benefits shall be calculated pursuant to § 3-12-92. For purposes of benefits earned prior to July 1, 1983, conservation officers shall have a normal retirement age of sixty-five. For purposes of benefits earned after June 30, 1983, conservation officers shall have a normal retirement age of fifty-five.

**Source:** SL 1983, ch 19, § 3; SL 1989, ch 38, § 7.

#### **Library References**

States Ⓒ64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211 to 213, 216 to 217, 219 to 220.

### 3-12-62.9. Benefits of conservation officers employed by Department of Game, Fish and Parks, Division of Custer State Park, and park rangers—Credited service

To determine the retirement benefits of conservation officers employed by the Department of Game, Fish and Parks, Division of Custer State Park, and park rangers, for credited service earned prior to July 1, 1995, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after June 30, 1995, the benefits shall be calculated pursuant to § 3-12-92.

**SOUTH DAKOTA RETIREMENT SYSTEM**

**§ 3-12-62.11**

**Source:** SL 1995, ch 18, § 3.

**Library References**  
States Ⓒ64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

**3-12-62.10. Watertown firemen pension fund members—  
Credited service**

On July 1, 1995, all members of the city of Watertown firemen pension fund as of June 30, 1995, including all retirees and benefit recipients, shall become members of the system. Each individual shall receive credited service under the system for all service earned under the city of Watertown firemen pension fund.

**Source:** SL 1995, ch 19, § 1.

**Library References**  
Municipal Corporations Ⓒ200(2).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740 to 744, 752 to 753, 756, 763 to  
764.

**3-12-62.11. Watertown firemen—Benefits paid from the system—Minimum benefit**

Each individual described in § 3-12-62.10 shall receive the same benefit under the form of annuity provided by the city of Watertown firemen pension fund in effect on June 30, 1995, which benefit shall be improved on July 1, 1995, and thereafter in accordance with § 3-12-88. The benefits of individuals described in § 3-12-62.10 who are entitled to receive benefits from the city of Watertown firemen pension fund as of July 1, 1995, shall be paid from the fund established by this chapter and funded pursuant to §§ 3-12-62.12 and 3-12-62.13.

Firemen who are not retired on July 1, 1994, shall be guaranteed a minimum benefit equal to the accrued benefit under the city of Watertown firemen pension fund as of July 1, 1994. If the minimum benefit is paid in lieu of a benefit under chapter 3-12, the minimum benefit may not be improved annually as provided in § 3-12-88 and the member is not entitled to benefits pursuant to § 3-12-94 or subdivision 3-12-95(4).

**Source:** SL 1995, ch 19, § 2.

### § 3-12-62.11

### PUBLIC OFFICERS AND EMPLOYEES

#### Library References

Municipal Corporations Ⓒ200(7).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740, 742 to 744, 752 to 754, 756,  
763 to 764.

### 3-12-62.12. Watertown firemen—Payments by Watertown

The city of Watertown shall pay to the system an amount equal to the present value of all benefits earned by individuals described in § 3-12-62.10 prior to July 1, 1995, and multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1994. The amount shall be determined on July 1, 1995, by the system's actuary. Any amount to be paid to the system by the city of Watertown which exceeds the value of the assets of the city of Watertown firemen pension fund, as determined as of the date of transfer, shall be paid pursuant to the provisions of § 3-12-69.

**Source:** SL 1995, ch 19, § 3.

#### Library References

Municipal Corporations Ⓒ200(4).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740, 742 to 744, 752 to 753, 756,  
763 to 764.

### 3-12-62.13. Watertown firemen—Crediting transfers from city of Watertown firemen pension fund

All amounts transferred to the system from the city of Watertown firemen pension fund which under the city of Watertown firemen pension fund were credited to the accounts of individual employees are considered member contributions under this chapter.

**Source:** SL 1995, ch 19, § 4.

#### Library References

Municipal Corporations Ⓒ200(4).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740, 742 to 744, 752 to 753, 756,  
763 to 764.

**3–12–63. Officers and employees excluded from membership in system**

Membership in the system shall exclude the following:

- (1) All elective officers except justices and judges, unless such person elects and is otherwise qualified to become a member of the system;
- (2) All personnel in the Department of Labor and Regulation who were employed prior to July 1, 1980, and who elect to remain participants in the retirement system provided by chapter 61–2;
- (3) The governing body of any participating county, municipality, or other political subdivision; and
- (4) All personnel employed by the municipality of Sioux Falls prior to July 1, 2013. However, any person employed prior to July 1, 2013, who separates from service with the municipality of Sioux Falls and is subsequently rehired by the municipality of Sioux Falls and begins working after June 30, 2013, as a permanent full-time employee as defined in subdivision 3–12–47(54), shall be a member of the system.

**Source:** SL 1967, ch 303, § 4; SDCL § 3–12–20; SL 1968, ch 216, § 1; SDCL Supp, § 3–12–20.1; SL 1973, ch 24, § 3; SL 1974, ch 35, § 20; SL 1975, ch 38, § 9; SL 1975, ch 39, § 4; SL 1976, ch 39, § 6; SL 1977, ch 30, § 1; SL 1980, ch 33, § 1; SL 2011, ch 1 (Ex. Ord. 11–1), § 33, eff. Apr. 12, 2011; SL 2013, ch 19, § 2; SL 2015, ch 25, § 4.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3–12–64. Elective officers permitted to join system—Service credited**

A full-time elective officer if he is not a contributing member of the system at the date the participating unit enters the system or on July 1, 1974, and is not otherwise excluded may elect to become a member, provided, however, his credited service shall be limited to service for which contributions were made.

**Source:** SL 1967, ch 303, § 4; SDCL § 3–12–21; SL 1968, ch 216, § 1; SL 1970, ch 25, § 3; SL 1974, ch 35, § 21.

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**PUBLIC OFFICERS AND EMPLOYEES**

**Administrative Code References**

Elected official's period of participation, see S.D. Admin. R. 62:01:07:11.

**Library References**

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

**3–12–65. Continuation of previously established retirement plan of political subdivision or public corporation—Vote of employees required to participate in consolidated system**

Any retirement plan of a political subdivision or public corporation created prior to July 1, 1974, may continue to operate that plan unless accepted in the system created by this chapter. Notwithstanding the provisions of this section and § 3–12–67, in no event, shall employees of such retirement plan be accepted as a participating unit unless the members of such retirement plan vote by a two-thirds majority to become members of the system created by this chapter.

**Source:** SL 1974, ch 35, § 23.

**Administrative Code References**

Deferred compensation plan, participation by political subdivisions, see S.D. Admin. R. 62:03:02:01.

Deferred compensation plans only as supplemental retirement plans, see S.D. Admin. R. 62:03:02:08.

**Library References**

Municipal Corporations ⇒220(2).

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic Nos. 268, 283.

C.J.S. Municipal Corporations § 806.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

**3–12–66. Newly established retirement plans of political subdivisions and public corporations to participate in consolidated system**

No political subdivision or public corporation, including municipalities, counties, and chartered governmental units, may establish any retirement plan unless such political subdivision or public corporation becomes a participating unit of the system created in this chapter.

**Source:** SL 1974, ch 35, § 24.

**Administrative Code References**

Deferred compensation plans only as supplemental retirement plans, see S.D. Admin. R. 62:03:02:08.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

**Notes of Decisions****Tax sheltered annuities 1****Transfer of nonvested funds 3****Water use districts 2****1. Tax sheltered annuities**

Tax sheltered annuities under §§ 3-10-4 to 3-10-7 do not violate this

section. Op.Atty.Gen. Opinion No. 77-9, 1977 WL 35947.

**2. Water use districts**

Water user districts are subject to this section. Op.Atty.Gen. Opinion No. 82-62 (Nov. 17, 1982), 1982 WL 188072.

**3. Transfer of nonvested funds**

Where city employees became employees of regional airport authority, a separate public body, the city had no authority to transfer any nonvested funds on behalf of the employees to the airport authority, but the employees would be entitled to a refund of members' contributions with or without interest as the city determined by the ordinance passed in accordance with § 9-16-3. Op.Atty.Gen. Opinion No. 86-39 (Sept. 30, 1986), 1986 WL 288780.

**3-12-67. Election by political subdivision or public corporation to participate in consolidated system**

Any political subdivision and any public corporation, including municipalities, counties and chartered governmental units in the State of South Dakota, may become a participating unit by a duly passed resolution of its governing body. Any political subdivision not participating in the system on June 30, 1985, may become a participating unit for only its class A members or only its class B members, or for both classes together. If a political subdivision elects to participate for either one class of members or for both classes, all permanent full-time employees in that class or classes shall become members.

**Source:** SL 1961, ch 255, § 16; SL 1965, ch 220, § 12; SL 1967, ch 303, § 10; SDCL §§ 3-12-36, 9-15-24; SL 1968, ch 216, § 1; SL 1974, ch 35, § 25; SL 1985, ch 25.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

**3-12-67.1. Election by municipality of Sioux Falls to be participating unit**

Notwithstanding the provisions of § 3-12-67, any employee of the municipality of Sioux Falls who begins working after

**§ 3–12–67.1**

**PUBLIC OFFICERS AND EMPLOYEES**

June 30, 2013, as a permanent full-time employee as defined in subdivision 3–12–47(54) shall be a member of the system if the municipality of Sioux Falls elects to be a participating unit by a duly passed resolution of its governing body.

**Source:** SL 2013, ch 19, § 1.

**3–12–68. Coverage of joint employees of participating and nonparticipating political subdivisions**

In the event a participating unit and a nonparticipating South Dakota political subdivision or public corporation enter into an agreement to provide certain public services on a joint basis, they may agree to consider persons employed pursuant to such agreement as if they were solely employees of the participating unit for the exclusive purposes of the system created in this chapter. The total compensation paid a person because of such employment shall be considered compensation paid him by the participating unit and services rendered by such person because of such employment shall be considered service rendered by him to the participating unit.

**Source:** SL 1973, ch 51, § 1; SDCL Supp, § 9–15–25.1; SL 1974, ch 35, § 26.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
⊕101.5(1).	436.
Westlaw Topic No. 283.	

**3–12–69. Accrued benefit deposit required when political subdivision or public corporation joins consolidated system—Participation by employees—Deferred payment of deposit**

Employees of an eligible political subdivision or public corporation not participating in the systems consolidated into the system created by this chapter, may become a participating unit in the system if the unit commits to deposit an amount equal to the present value of the benefits earned to date, based on the employee’s prior service to the unit to be covered by the system. The expense of the actuarial determination of this amount shall be borne by the applicant. All eligible employees of an applicant shall participate in the system upon admission. If the unit is unable to deposit this amount in a single sum, the unit shall

have the option to pay the amount by periodic level installments over a period up to twenty years, the value of which, when discounted for interest at the effective rate, is equal to the amount due at the date of participation.

**Source:** SL 1967, ch 303, § 10; SDCL § 3–12–36; SL 1968, ch 216, § 1; SL 1974, ch 35, § 27; SL 2004, ch 42, § 12.

<p><b>Library References</b> Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283.</p>	<p>C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.</p>
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### **3–12–69.1. Board of Regents employees—Definition of balances**

Terms as used in §§ 3–12–69.1 to 3–12–69.5, inclusive, unless the context otherwise requires, shall mean:

- (1) “Board of Regents’ balance,” the contributions from April 1, 1964, to June 30, 1975, plus accumulated interest, made by the Board of Regents and deposited on behalf of an employee in any pension fund that is established by contract with an insurance company;
- (2) “Excess balance,” the contributions in addition to those accumulated in the individual balance and made from April 1, 1964, to June 30, 1975, with accumulated interest, by a Board of Regents employee included in the provisions of §§ 3–12–69.1 to 3–12–69.5, inclusive, and deposited in any pension fund that is established by contract with an insurance company;
- (3) “Individual balance,” the contributions from April 1, 1964, to June 30, 1975, with accumulated interest made on a matching basis by the Board of Regents’ employees included in the provisions of §§ 3–12–69.1 to 3–12–69.5, inclusive, and the Board of Regents and deposited on behalf of the employee in any pension fund that is established by contract with an insurance company.

**Source:** SL 1975, ch 38, § 1; SL 1979, ch 29, § 1.

### **3–12–69.2. Existing regents’ contracts preserved—Expansion of retirement plan—Transition**

Nothing in §§ 3–12–69.1 to 3–12–69.5, inclusive, shall be construed to be a termination of any contract made on behalf of

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the State of South Dakota and its employees by the Board of Regents. The purpose of said sections is to expand the retirement plan of the Board of Regents for faculty and administrators and to allow for the transition of the plan in effect from April 1, 1964, to June 30, 1975, into the South Dakota Retirement System as provided for in this chapter.

**Source:** SL 1975, ch 38, § 2.

### **Library References**

Education ⌘947.  
Westlaw Topic No. 141E.

## **3-12-69.3. Contract for purchase of service for Board of Regents**

The Board of Regents shall enter into a contractual agreement with the Board of Trustees on the same basis as a new participating unit for purchase of a maximum of twenty years of service prior to April 1, 1964, pursuant to the provisions of § 3-12-69 and subject to the provisions of § 3-12-69.4.

**Source:** SL 1975, ch 38, § 3.

### **Library References**

Education ⌘947.  
Westlaw Topic No. 141E.

## **3-12-69.4. Contributory service credited to Board of Regents employees—Eligibility of nonparticipating employees—Qualification for prior credited service**

Employees of the Board of Regents shall be credited with contributory service for each year such employee participated in the retirement plan in effect between April 1, 1964, and June 30, 1975. Employees of the Board of Regents who did not participate during all the years that they were eligible to participate in the Board of Regents retirement plan in effect from April 1, 1964, to June 30, 1975, are eligible for credited service only if purchase is made pursuant to § 3-12-83. Credited service must be obtained for all South Dakota service between April 1, 1964, and June 30, 1975, in order to qualify an employee for credited service prior to April 1, 1964, as granted by § 3-12-69.3.

**Source:** SL 1975, ch 38, § 4.

**Library References**

Education Ⓔ947.  
Westlaw Topic No. 141E.

**3-12-69.5. Normal retirement allowance reduced by actuarial equivalent—Deposit of individual balance—Member contributions**

All benefits payable pursuant to § 3-12-91 shall be reduced by the actuarial equivalent that could be purchased by a sum of money equal to twice the value of the Board of Regents' balance payable at the member's retirement. The Board of Regents is hereby authorized, if the Board of Regents receives member approval, to deposit with the system the individual balance accumulated in the regents retirement system during the period April 1, 1964, to June 30, 1975. Such deposit shall not include the excess balance as defined in § 3-12-69.1. In the administration of this chapter, the individual balance shall be considered as member contributions.

**Source:** SL 1975, ch 38, § 5; SL 1976, ch 40, § 2; SL 1979, ch 29, § 2.

**Library References**

Education Ⓔ947.  
Westlaw Topic No. 141E.

**3-12-70. Effective date of participation of employees of participating unit**

The date when the participation of the employees of a participating unit may commence shall be at the beginning of the first month of a calendar quarter.

**Source:** SL 1967, ch 303, § 10; SDCL § 3-12-37; SL 1968, ch 216, § 1; SL 1974, ch 35, § 28; SL 2009, ch 20, § 1.

**Library References**

Officers and Public Employees Ⓔ101.5(1). Westlaw Topic No. 283.	C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.
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**3-12-71. Rate of contributions—Deduction from pay—Employer to make members' contributions**

The member shall make a contribution to the system, except as specified in § 3-12-200, and the employer shall make an

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equal contribution to the system, except as otherwise specified, at the following rates:

- (1) Class A members five percent of compensation through June 30, 2002, and six percent of compensation after June 30, 2002;
- (2) Justices, judges, and magistrate judges nine percent of compensation;
- (3) All other Class B members eight percent of compensation.

The employer shall cause to be deducted on each payroll of a member for each payroll period the contribution payable by the member as provided in this section.

Except for those contributions specified in § 3-12-200, contributions required of members by this section shall be made by the participating unit pursuant to the provisions of § 414(h)(2) of the Internal Revenue Code. Such contributions shall be classified as member contributions for all purposes under this chapter. A member may not receive the amount of such contributions directly rather than as contributions under this section.

**Source:** SL 1967, ch 303, § 5; SDCL §§ 3-12-22, 3-12-23; SL 1968, ch 216, § 1; SL 1974, ch 35, § 29; SL 1977, ch 31, § 5; SL 1982, ch 38; SL 1984, ch 23, § 2; SL 1989, ch 38, § 8; SL 2000, ch 23, § 1; SL 2010, ch 23, § 5, eff. Apr. 1, 2010; SL 2013, ch 20, § 6.

**Historical and Statutory Notes**

SL 2010, ch 23, § 10 provided that "Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010."

**Cross References**

Award of back pay and benefits to employees disciplined without good cause, see § 3-6D-17.

**Administrative Code References**

Active membership defined by period of contributions, see S.D. Admin. R. 62:01:02:08.

Contribution reports, date, transmittal, see S.D. Admin. R. 62:01:02:09.

Determination of class A or class B member, see S.D. Admin. R. 62:01:02:01.

Permanent full-time employee, probationary period, see S.D. Admin. R. 62:01:02:04.

Refund of active contributions made during period of disability, see S.D. Admin. R. 62:01:02:06.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

**1. Retirement bonus**

Retirement bonus, either in lump sum or installments, is not subject to South Dakota retirement system contributions under this section. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

**Notes of Decisions**

Retirement bonus 1

**3–12–72. Monthly transmission of contributions—Deposit in fund**

All employee and employer contributions to the system and the necessary supporting data shall be transmitted by the employer at least monthly to the administration office of the system. Each such monthly transmission for each respective calendar month shall be completed by the fifteenth day of the following month. All supporting data shall be transmitted electronically in a format determined by system personnel. All contributions shall be deposited with the state treasurer in the fund duly established to administer this chapter. If any participating unit fails to deliver contributions with respect to compensation paid in any month and the necessary supporting data by the fifteenth day of the following month, the participating unit shall pay to the system a penalty equal to five percent of the delinquent contributions. The delinquent contributions and the penalty shall bear interest at the assumed rate of return from the date due until the date paid. In calculating accumulated contributions pursuant to subdivision 3–12–47(2), all contributions with respect to compensation paid in any fiscal year shall be included in the calculation of interest credited for that fiscal year.

**Source:** SL 1959, ch 84, § 28; SDC Supp 1960, § 15.3932 (3); SL 1961, ch 255, § 29; SL 1965, ch 220, § 21; SL 1967, ch 50, § 4; SL 1967, ch 303, § 5; SDCL §§ 3–12–22 to 3–12–24, 3–12–28, 9–15–49, 13–45–32; SL 1968, ch 216, § 1; SL 1970, ch 25, § 4; SL 1974, ch 35, § 30; SL 1978, ch 32, § 1; SL 1986, ch 38; SL 2008, ch 20, § 7, eff. Jan. 1, 2009.

**Historical and Statutory Notes**

SL 2008, ch 20, § 21 provides: “Sections 7 and 8 of this Act are effective on January 1, 2009.”

**Administrative Code References**

Active membership defined by period of contributions, see S.D. Admin. R. 62:01:02:08.

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## PUBLIC OFFICERS AND EMPLOYEES

Authorized agents, see S.D. Admin. R. 62:01:07:04.

Contribution reports, date, transmittal, see S.D. Admin. R. 62:01:02:09.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

### Library References

Officers and Public Employees  
⇒101.5(1).

### 3–12–72.1. Use of fund restricted

No part of the fund created by this chapter may be used for any purpose other than for the exclusive benefit of members and their beneficiaries, payment of reasonable administrative expenses of the system, and reimbursement of overpayments made by employers. No participating unit may receive any amounts from the fund except such amounts which may remain after the satisfaction of all liabilities of the system to its members.

**Source:** SL 1984, ch 23, § 3; SL 2012, ch 26, § 10.

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### 3–12–72.2. Rights of members on termination of system or discontinuance of contributions

If the system is terminated, or if contributions to the system are discontinued, the rights of all members to benefits which have accrued as of the date of termination or discontinuation of contributions shall vest. A member's recourse against the fund shall be limited by the extent to which his benefits are funded.

**Source:** SL 1984, ch 23, § 4.

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### 3–12–72.3. Diversion of funds prohibited—Legislative policy

In order to ensure employee confidence in the preservation and management of the South Dakota Retirement System, it is legislative policy that there should be no legislative enactment

nor administrative action which would have the effect, directly or indirectly, of diverting any funds of the system to any purpose other than the administration and support of the benefits of members of the system.

**Source:** SL 1990, ch 34.

<p><b>Library References</b> Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283.</p>	<p>C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.</p>
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#### **3-12-72.4. Privatization of governmental function**

If a participating unit determines that a governmental function is to be privatized, the participating unit shall pass a resolution to that effect determining the date that its employees will cease to be public employees eligible for membership in the system. The participating unit shall notify the system and the employees affected of its resolution and, after the effective date, cease to make contributions to the South Dakota Retirement System as required in §§ 3-12-71 and 3-12-72. Any member affected by privatization is entitled to the benefits accrued as of the effective date under the provisions of chapter 3-12. For the purposes of determining eligibility for vesting pursuant to subdivision § 3-12-47(73) and early retirement pursuant to § 3-12-106, years of service with the successor employer shall be considered.

**Source:** SL 1997, ch 30, § 1.

<p><b>Administrative Code References</b> Privatized member's acquisition of certain service credit, retirement while continuing to work for a private employer, see S.D. Admin. R. 62:01:03:05.</p>	<p>Westlaw Topic No. 283. C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.</p>
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<p><b>Library References</b> Officers and Public Employees ⇒101.5(1).</p>
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#### **3-12-73. Service records and employee information furnished by employers**

The officers responsible for the personnel records of employees of each participating unit shall file with the Board of Trustees, in such form as the board shall from time to time

### § 3–12–73

### PUBLIC OFFICERS AND EMPLOYEES

prescribe, a detailed statement of all service rendered by each eligible employee of the system; and shall furnish such other information as the board shall from time to time require in the operation of the system.

**Source:** SL 1967, ch 303, § 10; SDCL § 3–12–39; SL 1968, ch 216, § 1; SL 1974, ch 35, § 31.

#### **Administrative Code References**

Active membership defined by period of contributions, see S.D. Admin. R. 62:01:02:08.

Authorized agents, see S.D. Admin. R. 62:01:07:04.

Contribution reports, date, transmittal, see S.D. Admin. R. 62:01:02:09.

Inspection and correction of files, see S.D. Admin. R. 62:01:07:02.

#### **Library References**

Officers and Public Employees  
⊞101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### **3–12–74. Deduction of delinquent contributions from payments due from state—Penalty and interest**

If any participating unit becomes delinquent thirty or more days by failure or refusal to pay any amounts due the system, the state treasurer shall, upon certification by the administrator of the delinquency, withhold and deduct the amount of the delinquency, penalty, and interest as specified in § 3–12–72 from the next succeeding payment or payments of any money in the hands of the state treasurer due and payable to the participating unit.

**Source:** SL 1959, ch 84, § 30; SDC Supp 1960, § 15.3934 (2); SL 1967, ch 50, § 5; SDCL § 13–45–38; SL 1970, ch 25, § 13; SDCL Supp, § 3–12–23.1; SL 1974, ch 35, § 32; SL 2008, ch 20, § 8, eff. Jan. 1, 2009.

#### **Historical and Statutory Notes**

SL 2008, ch 20, § 21 provides: “Sections 7 and 8 of this Act are effective on January 1, 2009.”

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

#### **Library References**

Officers and Public Employees  
⊞101.5(1).

### **3–12–75. Retirement allowance to terminated member with vested right—Calculation**

A terminated member who has a vested right in the system may leave the member’s accumulated contributions on deposit

with the system and receive a retirement allowance commencing at the member's retirement. In calculating such allowance, the member's final average compensation shall be increased by the improvement factor commencing each July first for each complete twelve-month period between the member's last termination and the date on which the member's retirement allowance commences.

**Source:** SL 1974, ch 35, § 33; SL 1982, ch 32, § 4; SL 1986, ch 37, § 4; SL 1998, ch 17, § 3; SL 2004, ch 40, § 8; SL 2010, ch 20, § 9.

#### **Administrative Code References**

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

#### **Library References**

Officers and Public Employees  
 ⌘101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

#### **Notes of Decisions**

**Vested rights** 1

#### **1. Vested rights**

Where Teachers' Retirement System fund consisted of contributions from members and legislative appropriations, and any member after thirty years teaching and upon attaining age sixty was entitled to receive annuity and pension, members who had contributed for thirty years but who had not reached age sixty had no vested rights in pension fund but had mere inchoate rights subject to cancellation at will of legislature. Laws 1939, c. 51, as amended, Laws 1945, c. 64, Laws 1951, cc. 74, 75. *Tait v. Freeman*, 1953, 74 S.D. 620, 57 N.W.2d 520. Constitutional Law ⌘ 2645

### **3–12–76. Withdrawal of accumulated contributions on termination of public service—Exception**

A member terminating public service is entitled to the sum of the member's accumulated contributions upon application to the system in lieu of retaining credited service and benefits provided in this chapter.

The right to withdraw accumulated contributions ceases within ninety days of a return to employment with a participating unit.

**Source:** SL 1967, ch 303, § 8; SDCL § 3–12–30; SL 1968, ch 216, § 1; SL 1974, ch 35, § 34; SL 1977, ch 28, § 6; SL 1995, ch 24, § 13; SL 1998, ch 15, § 6.

#### **Administrative Code References**

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Reentry into system for purposes of redeposit, see S.D. Admin. R. 62:01:02:11.

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Rollover of lump-sum distribution by inactive member, see S.D. Admin. R. 62:01:07:09.02.

Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

### Library References

Officers and Public Employees  
⇒101.5(1).

### 3-12-76.1. Withdrawal of accumulated contributions by member who does not terminate public service

Notwithstanding the provisions of § 3-12-76, a member who ceases to be a permanent full-time employee but who does not terminate public service may withdraw his accumulated contributions from the system, if, at the time of withdrawal, the member has made no contributions to the system for a period of at least one year. A member who withdraws his accumulated contributions under this section forfeits all credited service and benefits under this chapter.

**Source:** SL 1982, ch 32, § 3.

### Administrative Code References

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Reentry into system for purposes of redeposit, see S.D. Admin. R. 62:01:02:11.

Rollover of lump-sum distribution by inactive member, see S.D. Admin. R. 62:01:07:09.02.

### Library References

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

### 3-12-76.2. Application of forfeitures

Forfeitures arising because of termination of employment before the member becomes eligible for benefits or for any other reason shall be applied to reduce the costs of the system and not to increase the benefits otherwise payable to members.

**Source:** SL 1984, ch 23, § 5.

### Library References

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

### 3-12-76.3. Distribution by direct rollover

A member who elects to withdraw accumulated contributions as provided in § 3-12-76 or 3-12-76.1, or a member's surviv-

ing spouse or nonspouse beneficiary who receives a lump-sum payment pursuant to § 3-12-110, may receive the distribution directly. Eligible rollover distributions may be transferred by the system in a direct rollover to no more than one eligible retirement plan identified by a member, a member's surviving spouse, or a member's nonspouse beneficiary if the individual so elects. The board shall promulgate rules pursuant to chapter 1-26 to comply with federal mandates regarding rollover distributions. The system is not required to make an independent determination as to whether the plan identified by a member, surviving spouse, or nonspouse beneficiary qualifies as an eligible retirement plan. By electing a direct rollover and identifying the eligible retirement plan to which an eligible rollover distribution is to be made, a member, surviving spouse, or nonspouse beneficiary represents to the system that the identified plan qualifies as an eligible retirement plan. If a member, surviving spouse, or nonspouse beneficiary does not elect a direct rollover, the distribution shall be issued in the name of, and directly to, that person.

**Source:** SL 1993, ch 42, § 5; SL 1995, ch 24, § 17; SL 1998, ch 15, § 7; SL 2009, ch 20, § 2.

**Administrative Code References**

Rollover of beneficiary payment by surviving spouse or other beneficiary, see S.D. Admin. R. 62:01:07:10.

Rollover of lump-sum distribution by inactive member, see S.D. Admin. R. 62:01:07:09.02.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).

**3-12-77. Contributions left in system on termination of employment without vested right—Maximum period—Forfeiture**

A member of the system who is not vested may leave the member's accumulated contributions in the system upon termination of employment for a period not to exceed ten years from the date of termination. However, no additional contributions may be made to the system by the member or a participating unit following the date of termination and no benefits in the

### § 3-12-77

### PUBLIC OFFICERS AND EMPLOYEES

retirement system may accrue to a member of the system following the date of termination except as provided in § 3-12-72.4. If the member withdraws the member's accumulated contributions, membership in the system terminates. At the end of the ten-year period, no further interest may be credited with respect to contributions. If the member fails to withdraw the member's accumulated contributions within eleven years following the member's termination, the member shall forfeit all rights to the member's accumulated contributions and to any credited service in connection therewith, if the system has made reasonable efforts to notify the member of the member's withdrawal rights and the effect of this section.

**Source:** SL 1972, ch 22; SDCL Supp, § 3-12-32; SL 1974, ch 35, § 35; SL 1984, ch 24, § 1; SL 1998, ch 15, § 8; SL 1998, ch 18, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

#### **3-12-77.1. Uncollected payments from system—Reversion**

If any payment from the system remains uncollected for a period of three years following the date upon which a warrant for the payment was issued, the payment shall revert to the system and all rights to such payment shall terminate, if the system has made reasonable efforts to notify the person entitled to the payment of his right to the payment and the effect of this section.

**Source:** SL 1984, ch 24, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

#### **3-12-77.2. Forfeiture of contributions to predecessor system**

With respect to contributions made prior to July 1, 1974, to any predecessor system consolidated pursuant to § 3-12-46 and with respect to any payment made by any such predecessor system which became due prior to July 1, 1974, the time periods specified in §§ 3-12-77 and 3-12-77.1 commenced on July 1, 1974.

## SOUTH DAKOTA RETIREMENT SYSTEM

## § 3-12-77.4

Note 1

**Source:** SL 1984, ch 24, § 3.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⊞101.5(1).	
Westlaw Topic No. 283.	

### 3-12-77.3. Reinstatement of terminated rights

Any rights which have terminated pursuant to the provisions of § 3-12-77 or 3-12-77.1 may be reinstated upon presentation to the system administrator of a request for reinstatement of those rights and competent evidence of the rights.

**Source:** SL 1984, ch 24, § 4.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⊞101.5(1).	
Westlaw Topic No. 283.	

### 3-12-77.4. Early withdrawal precludes additional refund

No member or former member of the system who has withdrawn contributions from the system prior to July 1, 1998, may receive any additional refund under the provisions of §§ 3-12-47 to 3-12-143.

**Source:** SL 1998, ch 15, § 31.

#### **Commission Note**

The Code Commission substituted "3-12-143" for "3-12-152" to reflect the repeal of §§ 3-12-144 to 3-12-152 by SL 1998, ch 15, §§ 22 to 30.

#### **Library References**

Officers and Public Employees	⊞101.5(1).
Westlaw Topic No. 283.	
C.J.S. Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.

#### **Notes of Decisions**

##### **In general 1**

##### **1. In general**

Even assuming Board of Trustees of state Retirement System breached its

fiduciary duty to former members who requested and received a refund of contributions they made to System by failing to disclose to such members that it was considering seeking legislative approval to allow withdrawal of employer contributions as well, Board lacked authority to consider such breach of fiduciary duty as a basis for refunding employer contributions after legislature approved the proposed amendment, where amendment specifically provided that no member or former member who withdrew contributions before its effective date could receive an additional refund. SDCL 3-12-77.4. O'Toole v. Board of Trustees of South Dakota Retirement System, 648 N.W.2d 342, 2002 S.D. 77. States ⊞ 64.1(4)

**§ 3-12-78**

**PUBLIC OFFICERS AND EMPLOYEES**

**3-12-78. Prior service credit on return of nonvested member to employment**

If a nonvested member who has terminated employment and has left the member’s accumulated contributions in the system returns to employment with a participating unit, the system shall credit the member’s prior service time toward the total length of service necessary for the member to obtain the credited service necessary for benefits provided by this chapter.

**Source:** SL 1972, ch 22; SDCL Supp, § 3-12-32; SL 1974, ch 35, § 36; SL 1998, ch 18, § 3; SL 2008, ch 20, § 9.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
⊕101.5(1).	436.
Westlaw Topic No. 283.	

**3-12-79. Repealed by SL 1998, ch 18, § 4**

<b>Historical and Statutory Notes</b>	member who does not return to employ-
The repealed section related to with-	ment, termination of membership.
drawal of contributions by nonvested	

**3-12-80. Redeposit of contributions by member returning to service—Time of redeposit**

If a person whose accumulated contributions have been refunded since July 1, 1974, reenters the system, the person may elect to redeposit the accumulated contributions, with compound interest at the assumed rate of return between the date of withdrawal and the date of redeposit. The redeposit shall be made within two years after reentry into the system and the credited service forfeited when contributions were refunded shall then be reinstated; any employer contributions forfeited at the time of refund shall be reinstated; and the member, except as provided in § 3-12-131, shall be regarded as having never refunded.

Any withdrawals of additional contributions made pursuant to § 3-12-104 shall be considered accumulated contributions for purposes of redeposit to reinstate the credited service forfeited when contributions were refunded.

**Source:** SL 1974, ch 35, § 38; SL 1977, ch 28, § 7; SL 1978, ch 32, § 2; SL 1996, ch 31; SL 2008, ch 20, § 10; SL 2009, ch 20, § 3.

## SOUTH DAKOTA RETIREMENT SYSTEM

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### **Administrative Code References**

Reentry into system for purposes of redeposit, limit on redeposit, see S.D. Admin. R. 62:01:02:11.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

### **Library References**

Officers and Public Employees  
⇒101.5(1).

### **3–12–81. Repealed by SL 2004, ch 37, § 4**

#### **Commission Note**

This section was amended by SL 2004, ch 38, § 8 and repealed by SL 2004, ch 37, § 4. The Code Commission deems the legislative intent was to repeal this section.

a new employee if withdrawn contributions were not redeposited, was derived from SL 1967, ch 303, § 9; SDCL, § 3–12–34; SL 1968, ch 216, § 1; SL 1970, ch 25, § 10; SL 1974, ch 35, § 38.

#### **Historical and Statutory Notes**

The repealed section, which related to a reemployed member being treated as

### **3–12–81.1. Reemployment of retired member—Termination of relationship with initial participating unit—Hiring procedures**

If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member's employment relationship with the initial participating unit, as outlined in subdivision 3–12–47(70) and as required pursuant to Revenue Ruling 57–115 by the Internal Revenue Service. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its chief executive officer, the officer's agent, or the chair of its governing commission or board shall so certify.

**Source:** SL 2004, ch 38, § 6; SL 2010, ch 23, § 8, eff. Apr. 1, 2010.

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### Historical and Statutory Notes

SL 2010, ch 23, § 10 provided that “Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010.”

### Administrative Code References

Certification when retired member becomes reemployed, penalty, see S.D. Admin. R. 62:01:03:02.01.

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

## **3-12-82. Retirement allowances for members who reentered covered employment between July 1, 2004 and April 1, 2010**

If less than three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) is acquired after a retired member's reentry into covered employment, the member upon subsequent retirement shall receive a refund of the member's accumulated contributions.

If three years or more of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) are acquired after a retired member's reentry into covered employment, the member upon subsequent retirement may receive either a refund of the member's accumulated contributions or an additional allowance based upon the member's credited service and final compensation earned during such reentry. Only the member's credited service from the subsequent employment shall be taken into account in calculating a reduction pursuant to § 3-12-106, if any, in the member's additional allowance. In addition, the annual increase applied to the original allowance pursuant to § 3-12-88 shall be eliminated for such period of reemployment, unless the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently reentered covered employment as a Class A member.

The provisions of this section apply to any member who retired without any reduction in benefits pursuant to § 3-12-106 and who reenters covered employment on or after July 1, 2004, but prior to April 1, 2010.

**Source:** SL 1974, ch 35, § 39; SL 1978, ch 32, § 3; SL 1982, ch 32, § 5; SL 1997, ch 28, § 1; SL 1998, ch 15, § 10; SL 2004, ch 38, § 1; SL 2005, ch 24, § 3; SL 2010, ch 20, § 10; SL 2010, ch 23, § 6, eff. Apr. 1, 2010; SL 2012, ch 26, § 11.

**Historical and Statutory Notes**

SL 1997, c. 28, §§ 3 and 4, provide:

“Section 3. The provisions of this Act apply to any member whose benefits are suspended pursuant to § 3–12–111 on the effective date of this Act. The provisions of this Act apply to any member whose benefits previously were suspended pursuant to § 3–12–111, if the member elects to have the provisions apply.

“Section 4. Any increase in a member’s retirement benefit as a result of the provisions of this Act shall be prospective only from the effective date of this Act.”

SL 2010, ch 23, § 10 provided that “Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010.”

**Library References**

Officers and Public Employees  
 ⌘101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

**3–12–83. Purchase of prior service credit—Calculation of amount due**

A current contributing member of the system may receive credited service by election to make, or have made on the member’s behalf, contributions, based on the higher of the member’s current compensation, or the member’s final compensation calculated as if the member retired on the date of election, at an actuarially- determined percentage times the member rate, for each year of service for which the member wishes to receive credit, if:

- (1) The current contributing member of the system could have established credit for any South Dakota public service by making contributions under this chapter or any prior law; or
- (2) The current contributing member was not permitted to establish credit for any South Dakota public service.

The amount of the credited service and the rate of contribution shall be at class A rates unless the service for which credit is sought was rendered as a class B member in which case class B rates shall apply. If a participating unit has failed to pay employer or member contributions to the system on behalf of a member as required under this chapter or under any precedes-

sor system consolidated pursuant to § 3-12-46, the amount due the system shall be calculated in accordance with this section.

The member rate in effect as of July 1, 2001, shall be used in calculation of the purchase cost of any service performed prior to July 1, 2002, if a contract to purchase such service is in place prior to July 1, 2004. The member rate in effect on and after July 1, 2002, shall be the basis for calculation of the purchase cost of any service if the contract to purchase such service is not in place until on or after July 1, 2004.

**Source:** SL 1974, ch 35, § 40; SL 1977, ch 28, § 8; SL 1980, ch 31, § 4; SL 1984, ch 24, § 5; SL 1989, ch 38, § 16; SL 2002, ch 23, § 2; SL 2004, ch 39, § 1.

**Administrative Code References**

Preparation and expiration of a contract to purchase credited service, see S.D. Admin. R. 62:01:02:10.

paid, is now affixed at rate established under this chapter. Op.Atty.Gen. Opinion No. 78-15 (Apr. 17, 1978), 1978 WL 33885.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

**2. Limitation of actions**

Former school superintendent's action against school district seeking contribution to public retirement fund accrued, for purposes of six-year statute of limitations, when superintendent knew of all pertinent facts regarding his right to retirement fund contributions, not at date of his retirement. SDCL 3-12-83, 15-2-13(2). *Jiricek v. Woonsocket School Dist. No. 55-4*, 1992, 489 N.W.2d 348. Limitation Of Actions ⌘ 95(14)

**Notes of Decisions**

**Limitation of actions 2**

**Rate of contribution 1**

**1. Rate of contribution**

Obligation incurred by school district under old pre-1974 rate, but not then

**3-12-83.1. Purchase of prior service credit on tax-deferred basis**

Other provisions of this chapter notwithstanding, any participating unit may become a tax-qualifying purchase unit at any time on or after July 1, 1996, if the unit is able to transmit credited service purchase data to the system by electronic media compatible with the system. The decision to become a tax-qualifying purchase unit shall be made by the elected official, the appointed official, or the governing body in charge of the unit. The unit shall become a tax-qualifying purchase unit as soon as notice of the decision has been delivered in writing

to the system. If a unit becomes a tax-qualifying purchase unit, any unit employee member who purchases credited service under this chapter shall do so as provided in § 3-12-83.2. A tax-qualifying purchase unit at a later date may choose to rescind such status and may do so by delivering written notice of the decision to the system. However, if such a rescission, any employer contribution agreement entered into pursuant to § 3-12-83.2, but not yet completed, shall continue until completion or until death or termination of the member.

**Source:** SL 1996, ch 30, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

### **3-12-83.2. Purchase of prior service credit by member of tax-qualifying purchase unit**

The provisions of § 3-12-83 notwithstanding, a member who is employed by a tax-qualifying purchase unit may purchase credited service pursuant to the procedures outlined in §§ 3-12-83 and 3-12-84 on a tax-deferred basis pursuant to § 414(h)(2) of the Internal Revenue Code. The purchase shall be in the nature of a credited service purchase under the provisions of § 3-12-83, except that:

- (1) The purchase shall be pursuant to an irrevocable employer contribution agreement entered into between the member and the tax-qualifying purchase unit and shall be executed prior to the period of contribution;
- (2) The irrevocable employer contribution agreement may not exceed a period of ten years;
- (3) The contributions may represent reductions in the member's compensation but shall be deemed employer contributions pursuant to § 3-12-71;
- (4) The contributions may be for any period of uncredited service;
- (5) No other purchase of uncredited service pursuant to § 3-12-83 or other provision of this chapter, may take

**§ 3-12-83.2**

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place while an irrevocable employer contribution agreement is in effect pursuant to this section; and

- (6) The irrevocable employer contribution agreement shall be for an amount that, when discounted for interest at the assumed rate of return, equals the total purchase cost.

In no event may a member receive the contributions directly. If a member dies or terminates employment prior to completion of the member’s irrevocable employer contribution agreement, the member’s credited service shall be adjusted by the system on the basis of that portion of the agreement that was completed prior to the death or termination.

A member who is participating in an installment credited service purchase pursuant to § 3-12-87 on the date that the member’s employer unit becomes a tax-qualifying purchase unit shall either terminate the purchase or complete the purchase as a tax-deferral purchase pursuant to this section. If the member elects to continue the purchase, the original purchase agreement shall be deemed an irrevocable employer contribution agreement.

**Source:** SL 1996, ch 30, § 3; SL 2008, ch 20, § 11; SL 2013, ch 20, § 7.

**Administrative Code References**

Leave of absence without pay during service purchase agreement, see S.D. Admin. R. 62:01:02:07.

Preparation and expiration of a contract to purchase credited service, see S.D. Admin. R. 62:01:02:10.

**Library References**

Officers and Public Employees  
§101.5(1).

Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

**3-12-84. Purchase of prior service credit for public service not covered by retirement plan**

If a current contributing member of this system has other public service for which the member is not entitled to retirement benefits from another public retirement system, the member may elect to deposit or have deposited on the member’s behalf an amount equal to an actuarially-determined percentage times the Class A rate of contribution multiplied by the higher of the member’s annual compensation at the time of making the election, or the member’s final compensation calcu-

lated as if the member retired on the date of the member's election, for each year of other public service for which the member wishes to receive credit as a Class A member.

The member rate in effect as of July 1, 2001, shall be used in calculation of the purchase cost of any service performed prior to July 1, 2002, if a contract to purchase such service was in place prior to July 1, 2004. The member rate in effect on and after July 1, 2002, shall be the basis for calculation of the purchase cost of any service if the contract to purchase such service is not in place until on or after July 1, 2004.

**Source:** SL 1974, ch 35, § 41; SL 1980, ch 31, § 5; SL 1984, ch 24, § 6; SL 1989, ch 38, § 17; SL 2002, ch 23, § 3; SL 2004, ch 39, § 2.

**Administrative Code References**

Preparation and expiration of a contract to purchase credited service, see S.D. Admin. R. 62:01:02:10.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

**Notes of Decisions**

**Limitation of actions 1**

**1. Limitation of actions**

Former school superintendent's action against school district seeking contribution to public retirement fund accrued, for purposes of six-year statute of limitations, when superintendent knew of all pertinent facts regarding his right to retirement fund contributions, not at date of his retirement. SDCL 3–12–83, 15–2–13(2). *Jiricek v. Woonsocket School Dist. No. 55-4*, 1992, 489 N.W.2d 348. **Limitation Of Actions** ⇨ 95(14)

**3–12–84.1. Acquisition of credited service through transfer of funds—Requirements**

A contributing member may acquire credited service by utilizing a trustee to trustee transfer of funds, excluding any after tax employee contributions, from a member's individual retirement plan that meets the requirements of sections 403(b) or 457 of the Internal Revenue Code to pay the cost of purchase pursuant to § 3–12–83, 3–12–84, or 3–12–84.2 or the amount of a redeposit pursuant to § 3–12–80.

**Source:** SL 2002, ch 22, § 4; SL 2008, ch 20, § 12; SL 2013, ch 20, § 8.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).  
 Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

## § 3-12-84.2

## PUBLIC OFFICERS AND EMPLOYEES

### 3-12-84.2. Purchase of nonqualified permissive service credit allowed

Notwithstanding the restrictions contained in §§ 3-12-83 and 3-12-84, a current contributing member with over five years of contributory service in the system may purchase non-qualified permissive service credit as defined in and pursuant to the provisions of § 415(n) of the Internal Revenue Code.

**Source:** SL 2003, ch 94, § 2; SL 2009, ch 21, § 1; SL 2013, ch 20, § 9.

#### **Administrative Code References**

Preparation and expiration of a contract to purchase credited service, see S.D. Admin. R. 62:01:02:10.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

#### **Library References**

Officers and Public Employees  
⇒101.5(1).

### 3-12-84.3. Acquisition of credited service for members mobilized into certain federal military service

If a contributing member was mobilized into federal military service pursuant to the provisions of United States Code Title 10 after February 1, 2002, but prior to September 30, 2004, the member, after returning to active membership in the system, may acquire credited service at the rates in effect prior to July 1, 2004, for a period of two years after the member's release from such federal military service, the cost provisions of §§ 3-12-83, 3-12-84, and 3-12-130 notwithstanding. All other provisions in regard to credited service acquisition apply.

**Source:** SL 2005, ch 25, § 1.

### 3-12-85. Service credit for leave of absence—Contributions to cover period of absence

A member taking a leave of absence authorized by his employer may receive credited service during such leave if employee and employer contributions are made to the system during such leave by or on behalf of the employee. Such contributions shall be at the rates in effect during such leave and shall be based on the member's rate of compensation immediately prior to such leave. Such contributions shall be transmitted to the system at least monthly. For purposes of

calculation of benefits, the member shall be considered to have received compensation during the period of such leave at the rate used to calculate the contributions made during such leave. If contributions are not made during such leave, the member may receive credited service for such leave by making, or having made on his behalf, contributions as provided in § 3-12-83.

**Source:** SL 1967, ch 303, § 9; SDCL § 3-12-31; SL 1968, ch 216, § 1; SL 1970, ch 25, § 9; SL 1973, ch 27; SL 1974, ch 35, § 42; SL 1980, ch 31, § 7.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3-12-86. Credited service for leave of absence due to qualified military service—Return to employment after discharge**

A member shall receive credited service for leave of absence due to qualified military service, authorized in advance by the employer, without contribution by the employee or employer if the member returns to the employ of a participating unit within one year from the member's date of discharge from the member's initial period of qualified military service and if the member remains in the employ of a participating unit for at least one year. The member may not receive credited service for any voluntary extension of qualified military service at the instance of the member beyond the initial period of enlistment, induction, or call to active duty. Credited service granted under this section shall be only for the initial period of time that the member is performing qualified military service. No credited service granted under this section may be considered to represent either member contributions or employer contributions for purposes of contribution withdrawals pursuant to this chapter.

If the member returns to the employ of the member's employer unit within one year of discharge from the initial period of qualified military service, but does not remain in the employ of the unit for at least one year, the member shall be granted credited service for the initial period of qualified military ser-

vice pursuant to § 414(u)(8) of the Internal Revenue Code if the member deposits with the system employee contributions for the initial period of the qualified military service as provided for in § 414(u)(8)(C). The contributions shall be made in a lump sum, shall be based on the member's compensation immediately prior to the leave of absence, and shall be without interest. The participating unit that was the member's employer prior to the leave of absence shall deposit employer contributions in an equal amount with the system. Other provisions of this chapter notwithstanding, the member need not be a contributing member at the time the member deposits the contributions. The member is subject to the time limitations for payment provided for in § 414(u)(8)(C).

**Source:** SL 1970, ch 25, § 9; SDCL Supp, § 3-12-31; SL 1973, ch 27; SL 1974, ch 35, § 42; SL 1995, ch 24, § 12; SL 2008, ch 20, § 13; SL 2011, ch 20, § 2; SL 2013, ch 20, § 10.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

**1. Returning veterans**

Veteran entitled to be granted extended service credit for entire period in Army if extensions of his active duty tour were for convenience of federal government. Op.Atty.Gen. Opinion No. 80-66, 1980 WL 119241.

**Notes of Decisions**

**Returning veterans 1**

**3-12-86.1. Death or disability of member on leave of absence due to qualified military service—Return to service date and benefits**

If a member on leave of absence performing initial qualified military service dies, the member shall be considered to have returned from the leave of absence on the day prior to the member's death and become a contributing member for purposes of survivor benefits pursuant to § 3-12-95, if the member has at least one year of credited service prior to the member's death, including the initial period of qualified military service. If the member was contributing for additional survivor protection benefits pursuant to § 3-12-104 immediately prior to the leave of absence, the member shall be considered to have resumed such contributions on the day prior to the member's death.

If a member on leave of absence performing initial qualified military service becomes disabled pursuant to the disability criteria set out in chapter 3–12 and ARSD chapter 62:01:04, the member shall be considered to have returned from the leave of absence on the day prior to the member's discharge date and become a contributing member for purposes of eligibility for disability benefits pursuant to § 3–12–98, if the member has at least three years of credited service including the period of initial qualified military service. The provisions of § 3–12–98 notwithstanding, the member need not have been deemed to be a contributing member on the date of the member's disabling event.

**Source:** SL 2011, ch 20, § 3.

**Administrative Code References**

Application of chapter 62:01:04, see  
S.D. Admin. R. 62:01:04:00.

**3–12–87. Valuation of purchased prior service credit—Installment payments—Death of member—Adjustment when installments not paid**

Payment of a deposit with the system for credited service pursuant to §§ 3–12–83 to 3–12–86, inclusive, shall be determined and due at the time the notice of intention to make the payment is received by the system. The amount due may be paid by periodic, level installments over a period of up to ten years, the value of which, when discounted for interest at the assumed rate of return, is equal to the amount due at the date of the notice. If a member dies before completion of the installment payments, the surviving spouse may complete the payments due the system, but, unless the payments are being made by a participating unit, the amount shall be paid in full within ninety days of the member's death or retirement. In the event the periodic payments are not completed or paid when due, the administrator may make an appropriate adjustment to the credited service, benefits payable under this chapter, or schedule of payments to allow for the default. Any member participating in installment payments pursuant to this section prior to July 1, 1989, shall have the balance due on July 1, 1989, recalculated pursuant to §§ 3–12–83 and 3–12–84 and

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shall have the installment payments due on or after July 1, 1989, recalculated accordingly. The provisions of this section apply only to installment payment purchases of credited service that are not tax-deferred, but do not apply to tax-deferred purchases pursuant to § 3-12-83.2

**Source:** SL 1974, ch 35, § 43; SL 1977, ch 28, § 9; SL 1980, ch 31, § 6; SL 1989, ch 38, § 18; SL 1996, ch 30, § 4; SL 2008, ch 20, § 14.

**Library References**

Officers and Public Employees  
⌚101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

tribution to public retirement fund accrued, for purposes of six-year statute of limitations, when superintendent knew of all pertinent facts regarding his right to retirement fund contributions, not at date of his retirement. SDCL 3-12-83, 15-2-13(2). *Jiricek v. Woonsocket School Dist. No. 55-4*, 1992, 489 N.W.2d 348. Limitation Of Actions ⌚95(14)

**Notes of Decisions**

**Limitation of actions 1**

**1. Limitation of actions**

Former school superintendent's action against school district seeking con-

**3-12-88. Benefits increased by improvement factor—Increase elimination**

All benefits except those depending on the member's contribution balance shall be annually increased by the improvement factor. However, the annual increase shall be eliminated for any period of time that a retired member reenters covered employment in the system, unless the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently has reentered covered employment as a Class A member, or unless the member retired without a benefit suspension pursuant to § 3-12-111 and then reentered active status prior to July 1, 2004. Such elimination shall cease when the member again retires and draws either a refund or an additional retirement allowance.

**Source:** SL 1974, ch 35, § 44; SL 2004, ch 38, § 2; SL 2005, ch 26, § 1.

**Library References**

Officers and Public Employees  
⌚101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

**3–12–89. Uniform application of service credit rules**

Any period of credited service granted under the rules and regulations adopted by the Board of Trustees must be applied uniformly and consistently to all members.

**Source:** SL 1974, ch 35, § 45.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
⇒101.5(1).	436.
Westlaw Topic No. 283.	

**3–12–89.1. Rules regulating maximum annual benefit—Tax qualification—Limitation year defined**

Pursuant to chapter 1–26, the board shall adopt rules regulating the maximum annual benefit that may be paid to a member. The rules shall be consistent with maintaining the tax qualification of the system. No benefit may exceed the limitations imposed by § 415 of the Internal Revenue Code. For the purposes of administering the limitations imposed by § 415, the term, limitation year, means a period extending from July first of one calendar year through June thirtieth of the following calendar year.

**Source:** SL 1984, ch 23, § 6; SL 1996, ch 29, § 2; SL 1997, ch 32, § 2; SL 2002, ch 22, § 3; SL 2013, ch 20, § 1.

<b>Administrative Code References</b>	Westlaw Topic No. 283.
Retirement benefit limits, see S.D. Admin. R. 62:01:08:01 et seq.	C.J.S. Officers and Public Employees
	§§ 374 to 376, 421 to 430, 433 to
	436.

<b>Library References</b>
Officers and Public Employees
⇒101.5(1).

**3–12–90. Commencement of benefits on early or normal retirement—Termination of benefits—Maximum retroactive benefits on late application**

Benefits paid upon early or normal retirement shall commence on the earlier of the member's required beginning date or on the first day of the month following the later of, the date on which the member's contributory service terminated, thirty days after the written application for retirement benefits is received in the office of the administrator, or the date specified

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in the member's application for retirement. In any event the benefit shall be paid from the first day of the month. The last payment shall be made from the first day of the month in which the member's death occurs.

An individual who fails to make a timely application for retirement benefits may receive up to a maximum of three months of benefits retroactive to the date on which the member's contributory service terminated.

**Source:** SL 1967, ch 303, § 7; SDCL § 3-12-27; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-25; SL 1970, ch 25, § 5; SL 1974, ch 35, § 46; SL 1978, ch 32, § 4; SL 1993, ch 42, § 4.

### Administrative Code References

Determination of eligibility for retirement allowance, see S.D. Admin. R. 62:01:03:02.

### Library References

Officers and Public Employees  
⌘101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### Notes of Decisions

#### Vested rights 1

##### 1. Vested rights

Where Teachers' Retirement System fund consisted of contributions from members and legislative appropriations,

and any member after thirty years teaching and upon attaining age sixty was entitled to receive annuity and pension, members who had contributed for thirty years but who had not reached age sixty had no vested rights in pension fund but had mere inchoate rights subject to cancellation at will of legislature. Laws 1939, c. 51, as amended, Laws 1945, c. 64, Laws 1951, cc. 74, 75. Tait v. Freeman, 1953, 74 S.D. 620, 57 N.W.2d 520. Constitutional Law ⌘ 2645

Benefits vest on the later of the first of the month after retirement or the date requested by applicant, notwithstanding application time. Op.Atty. Gen. Opinion No. 77-44, 1977 WL 35982 (prior to 1978 amendment).

## 3-12-90.1 to 3-12-90.5. Repealed by SL 1989, ch 38, §§ 10 to 14

### Historical and Statutory Notes

Section 3-12-90.1 related to additional retirement benefits for member and beneficiaries retired prior to July 1, 1974.

Section 3-12-90.2 related to additional retirement benefits, amount of recalculated monthly allowance, and defined recalculated increase.

Section 3-12-90.3 related to members or beneficiaries not entitled to additional retirement benefits.

Section 3-12-90.4 related to payments from fund and appropriations for additional retirement benefits.

Section 3-12-90.5 related to appropriations for additional retirement benefits.

**3-12-90.6 to 3-12-90.8. Repealed by SL 1998, ch 15, §§ 11 to 13****Historical and Statutory Notes**

Section 3-12-90.6 related to recomputation of allowance of members who retired prior to 1991.

Section 3-12-90.7 related to amount of recomputed monthly allowance.

Section 3-12-90.8 prohibited certain members from receiving additional benefits.

**3-12-90.9. Repealed by SL 1989, ch 38, § 15****Historical and Statutory Notes**

The repealed section related to additional increases for recomputed benefits paid from fund.

**3-12-90.10. Repealed by SL 1998, ch 15, § 14****Historical and Statutory Notes**

The repealed section related to reduction of benefits, limitation.

**3-12-91. Amount of normal retirement allowance for class A members**

Upon retirement, a member shall receive a normal retirement allowance, commencing at normal retirement age or thereafter as provided in § 3-12-90, for Class A credited service, equal to the larger of 1.7% of final average compensation for each year of Class A credited service before July 1, 2008, plus 1.55% of final average compensation for each year of Class A credited service after July 1, 2008, or 2.4% of final average compensation for each year of Class A credited service before July 1, 2008, plus 2.25% of final average compensation for each year of Class A credited service after July 1, 2008, less other public benefits. For purposes of this section, federal military retirement or federal National Guard retirement benefits are not other public benefits. For the purposes of this section, any Class A member who did not participate in federal social security during the period of credited service shall be presumed to be entitled to the maximum primary social security benefit permitted at the time of retirement. Class A credited service includes all credited service under this or any of the retirement systems consolidated pursuant to § 3-12-46.

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**Source:** SL 1967, ch 303, § 7; SDCL § 3-12-27; SL 1968, ch 216, § 1; SDCL Supp, § 3-12-25; SL 1970, ch 25, § 5; SL 1974, ch 35, § 47; SL 1975, ch 39, § 5; SL 1982, ch 39; SL 1986, ch 37, § 5; SL 1987, ch 37, §§ 7, 8; SL 1989, ch 38, § 4; SL 1990, ch 37; SL 1991, ch 32; SL 1993, ch 44, § 4; SL 1994, ch 34, § 3; SL 1997, ch 26, § 2; SL 1998, ch 15, § 15; SL 1999, ch 15, § 2; SL 2000, ch 25, § 1; SL 2002, ch 23, § 1; SL 2008, ch 23, § 1.

### Historical and Statutory Notes

SL 2008, ch 23, § 5 provides:

“The provisions of sections 1 to 4, inclusive, of this Act notwithstanding, if the conditions described in § 3-12-122 exist, the board may recommend and the Legislature may adopt recommendations to decrease or eliminate the benefit improvements granted by this Act. Any such reductions or elimination need not be uniform between or among classes of members. There may be no legal recourse by any affected party in any manner to enjoin or otherwise to halt or delay the reductions or elimination.”

### Administrative Code References

Determination of class A or class B member, see S.D. Admin. R. 62:01:02:01.

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Opportunity to rescind election of annuity payment option, overpayments, see S.D. Admin. R. 62:01:07:09.01.

### Library References

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### Notes of Decisions

#### Early retirement benefits 1

##### 1. Early retirement benefits

Retirement bonus, either as lump sum or in installments, is not to be included in calculation of early retirement benefits under this section and § 3-12-106. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

### 3-12-91.1. Additional contribution by participating unit

Each participating unit shall make an additional contribution in the amount of six and two-tenths percent of any member's compensation in each calendar year that exceeds the maximum taxable amount for social security for the calendar year. The additional contributions shall be made only for Class A members and may not be treated as employer contributions.

**Source:** SL 2002, ch 23, § 5.

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

**3–12–92. Amount of normal retirement allowance for certain class B members**

Upon retirement, a member shall receive a normal retirement allowance, commencing at normal retirement age or thereafter as provided in § 3–12–90, for Class B credited service other than as a justice, judge, or magistrate judge, equal to 2.4% of final average compensation for each year of Class B credited service other than as a justice, judge, or magistrate judge before July 1, 2008, plus 2.0% of final average compensation for each year of Class B credited service other than as a justice, judge, or magistrate judge after July 1, 2008.

**Source:** SL 1974, ch 35, § 48; SL 1993, ch 44, § 5; SL 1994, ch 34, § 4; SL 1997, ch 26, § 3; SL 1998, ch 15, § 16; SL 1999, ch 15, § 3; SL 2000, ch 25, § 2; SL 2008, ch 23, § 2.

**Historical and Statutory Notes**

SL 2008, ch 23, § 5 provides:  
 “The provisions of sections 1 to 4, inclusive, of this Act notwithstanding, if the conditions described in § 3–12–122 exist, the board may recommend and the Legislature may adopt recommendations to decrease or eliminate the benefit improvements granted by this Act. Any such reductions or elimination need not be uniform between or among classes of members. There may be no legal recourse by any affected party in any manner to enjoin or otherwise to halt or delay the reductions or elimination.”

**Administrative Code References**

Determination of class A or class B member, see S.D. Admin. R. 62:01:02:01.

Determination of eligibility for retirement allowance, see S.D. Admin. R. 62:01:03:02.

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Opportunity to rescind election of annuity payment option, overpayments, see S.D. Admin. R. 62:01:07:09.01.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

**3–12–92.1. Penitentiary correctional staff benefits**

For purposes of determining the benefits of a penitentiary correctional staff, for credited service earned prior to July 1, 1978, the benefits shall be calculated pursuant to § 3–12–91 and for credited service after July 1, 1978, the benefits shall be calculated pursuant to § 3–12–92.

**Source:** SL 1977, ch 31, § 4.

### § 3-12-92.1

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**Library References**  
Prisons ◊397.  
Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners  
§ 16.

### 3-12-92.2. Calculation of benefits for sheriffs and deputies— Prior elective rights preserved

For the purposes of determining the benefits of county sheriffs and deputy county sheriffs, for credited service earned prior to January 1, 1980, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after January 1, 1980, the benefits shall be calculated pursuant to § 3-12-92. Nothing in this chapter shall be construed as an abridgement of the right of a sheriff to exercise his right to elect to participate pursuant to § 3-12-64.

**Source:** SL 1979, ch 26, §§ 2, 3.

**Library References**  
Sheriffs and Constables ◊28.  
Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables §§ 502  
to 505, 508 to 510, 514 to 516.

### 3-12-92.3. Calculation of benefits of parole agent

For purposes of determining the benefits of a parole agent, for credited service earned prior to July 1, 1991, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after June 30, 1991, the benefits shall be calculated pursuant to § 3-12-92.

**Source:** SL 1991, ch 29, § 3.

**Library References**  
Pardon and Parole ◊55.1.

Westlaw Topic No. 284.  
C.J.S. Pardon and Parole §§ 45 to 47.

### 3-12-92.4. Amount of retirement allowance for justice, judge, or magistrate judge

Upon retirement, a member shall receive a normal retirement allowance, commencing at normal retirement age or thereafter as provided in § 3-12-90, for the first fifteen years of Class B credited service as a justice, judge, or magistrate judge equal to 3.733% of final average compensation for each year of Class B credited service as a justice, judge, or magistrate judge before July 1, 2008, plus 3.333% of final average compensation for each year of Class B credited service as a justice, judge, or

magistrate judge after July 1, 2008. A member shall also receive for Class B credited service as a justice, judge, or magistrate judge in excess of fifteen years, 2.4% of final average compensation for each year of Class B credited service as a justice, judge, or magistrate judge before July 1, 2008, plus 2.0% of final average compensation for each year of Class B credited service as a justice, judge, or magistrate judge after July 1, 2008.

**Source:** SL 1994, ch 34, § 5; SL 1997, ch 26, § 4; SL 1998, ch 15, § 17; SL 1999, ch 15, § 4; SL 2000, ch 25, § 3; SL 2008, ch 23, § 3.

#### **Historical and Statutory Notes**

SL 2008, ch 23, § 5 provides:  
 “The provisions of sections 1 to 4, inclusive, of this Act notwithstanding, if the conditions described in § 3-12-122 exist, the board may recommend and the Legislature may adopt recommendations to decrease or eliminate the benefit improvements granted by this Act. Any such reductions or elimination need not be uniform between or among classes of members. There may be no legal recourse by any affected party in any manner to enjoin or otherwise to halt or delay the reductions or elimination.”

#### **Administrative Code References**

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Opportunity to rescind election of annuity payment option, overpayments, see S.D. Admin. R. 62:01:07:09.01.

#### **Library References**

Judges ¶22(11).  
 Westlaw Topic No. 227.  
 C.J.S. Judges §§ 204 to 206.

### **3-12-92.5. Repealed by SL 1999, ch 15, § 5**

#### **Historical and Statutory Notes**

The repealed section related to retirement allowances prior to July 1, 1997.

### **3-12-92.6. Adjustments in allowance for certain retirees based on time and circumstances of retirement**

Each member who retired prior to July 1, 2008, and each beneficiary of a deceased member who retired prior to July 1, 2008, shall receive a retirement allowance based on the provisions of § 3-12-91, 3-12-92, or 3-12-92.4 as applicable based on the member's final average compensation, credited service, and other public benefits at retirement and the benefit formulas in §§ 3-12-91, 3-12-92, and 3-12-92.4 when improved by the improvement factor from the date of retirement to July 1, 2008.

Increased benefits as provided by any amendment to this section are prospective in nature and are effective July 1, 2008.

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Each member or beneficiary of a member who retired prior to July 1, 1974, who is receiving benefits pursuant to § 3-12-126 or each member or beneficiary of a member who elected to retire pursuant to § 3-12-127, shall have a benefit increased by an additional 2.0% as of July 1, 2008, in lieu of the increase provided in this section.

If a member retired prior to normal retirement age, the allowance shall be adjusted in accordance with the law in effect at the time of retirement. If a member elected an alternate method of payment under the law in effect at the time of retirement, the allowance shall be adjusted in accordance with the law in effect at the time of retirement. If the additional allowance is to be paid to a beneficiary of a deceased member, the additional allowance shall be adjusted in accordance with the law in effect at the time of the member's retirement.

No member or beneficiary whose retirement allowance terminated prior to July 1, 2008, may receive any benefits pursuant to this section.

**Source:** SL 1997, ch 26, § 7; SL 1998, ch 15, § 19; SL 1999, ch 15, § 6; SL 2000, ch 25, § 4; SL 2008, ch 23, § 4.

#### **Historical and Statutory Notes**

SL 2008, ch 23, § 5 provides:  
"The provisions of sections 1 to 4, inclusive, of this Act notwithstanding, if the conditions described in § 3-12-122 exist, the board may recommend and the Legislature may adopt recommendations to decrease or eliminate the benefit improvements granted by this Act. Any such reductions or elimination need not be uniform between or among classes of members. There may

be no legal recourse by any affected party in any manner to enjoin or otherwise to halt or delay the reductions or elimination."

#### **Library References**

Officers and Public Employees  
§101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### **3-12-93. Amount of benefits for justice or judge mandatorily retired**

Any justice of the Supreme Court or judge of the circuit court of this state who is automatically retired pursuant to the provisions of § 16-1-4.1 or 16-6-31, or who, having reached age seventy, retired prior to January 7, 1975, and who has not fully qualified for retirement benefits as provided by this chapter

shall nevertheless receive retirement benefits in the proportion that his total time served bears to fifteen years, or if he has served in excess of fifteen years then receive full benefits.

**Source:** SL 1973, ch 133, § 3; SDCL Supp, § 16-8-9.3; SL 1974, ch 35, § 49.

**Cross References**

Additional compensation of Chief Justice, see § 16-1-3.1.

Additional compensation of presiding circuit judge, see § 16-6-5.1.

**Library References**

Judges Ⓒ22(11).

Westlaw Topic No. 227.

C.J.S. Judges §§ 204 to 206.

**3-12-94. Spouse's allowance on death of member after retirement age**

Upon the death of a retiree or any member who has reached normal retirement age, the surviving spouse is eligible to receive a normal retirement allowance, payable in monthly installments, equal to sixty percent of the retirement allowance that the member was receiving or was eligible to receive at the time of death.

**Source:** SL 1967, ch 303, § 9 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3-12-29.2; SL 1970, ch 25, § 8; SL 1974, ch 35, § 50; SL 1999, ch 16, § 1.

**Administrative Code References**

Independent status of the surviving spouse benefit if the member was retired or of retirement age, see S.D. Admin. R. 62:01:03:04.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees Ⓒ101.5(1).

**3-12-94.1. Allowance to surviving spouse of law enforcement officer retired for disability**

Notwithstanding the repeal of § 3-13-25 by chapter 35 of the 1974 Session Laws, the surviving spouse of a disability retiree under the Law Enforcement Officers' Retirement System as consolidated into the South Dakota Retirement System pursuant to § 3-12-46 shall upon the death of the member be entitled to an annuity equal to one-half the member's annuity at the time of death. The retirement for disability upon which

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annuity was based shall have been approved prior to July 1, 1974.

**Source:** SL 1979, ch 26, § 3A.

**Library References**  
Municipal Corporations §187(6).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 620  
to 622, 657, 660, 682, 690 to 691,  
696.

**3-12-95. Family benefits on death of contributing member before retirement and before July 1, 2015**

On the death of a contributing member prior to July 1, 2015, and prior to the earlier of the member attaining normal retirement age or the member's retirement, who has one or more years of contributory service; or if there has been a break in the member's employment of more than one year, one-half year of contributory service having been performed after the end of the last such break; or if the member was receiving a disability benefit which commenced after July 1, 1974, and was based on an application received by the system prior to July 1, 2015, the following benefits shall be paid:

- (1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to forty percent of the member's final average compensation, plus ten percent of such final average compensation for each child to a maximum of six such children;
- (2) The conservator or custodian of each child, on whose account there is no benefit payable under subdivision (1), shall receive on behalf of each child, to a maximum of five such children, an annual amount, payable in monthly installments, equal to twenty percent of the member's final average compensation;
- (3) If the sum of benefits payable under subdivisions (1) and (2) exceeds one hundred percent of the member's final average compensation, the benefits payable under both subdivisions (1) and (2) shall be proportionally reduced so that the total of the benefits is equal to one hundred percent of the member's final average compensation;

- (4) If there are no benefits being paid under subdivision (1) and the member's accumulated contributions have not been withdrawn pursuant to § 3-12-97, the spouse who has reached age sixty-five shall receive a monthly payment equal to sixty percent of the amount which would have been payable to the deceased member at normal retirement age based on the member's credited and projected service and projected compensation. The benefit payable under this subdivision shall be increased by application of the improvement factor commencing each July first for each complete twelve-month period between the date the member would have reached normal retirement age and the date benefits commence to the spouse.

Family benefits begin to accrue on the first day of the month following the death of the member.

**Source:** SL 1967, ch 303, § 9 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3-12-29.2; SL 1970, ch 25, § 8; SL 1974, ch 35, § 51; SL 1976, ch 40, § 3; SL 1979, ch 30, § 1; SL 1980, ch 31, § 8; SL 1982, ch 34, § 2; SL 1984, ch 25; SL 1993, ch 213, § 78; SL 1999, ch 16, § 2; SL 2004, ch 40, § 1; SL 2005, ch 24, § 4; SL 2006, ch 18, § 2; SL 2010, ch 20, § 11; SL 2014, ch 20, § 23.

**Historical and Statutory Notes**

SL 2004, ch 40, § 12 provides: "The provisions of this Act do not apply to benefits being paid pursuant to § 3-12-95, 3-12-99, or 3-12-105 prior to July 1, 2004."

**Administrative Code References**

Care of children defined, see S.D. Admin. R. 62:01:01:03.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

**3-12-95.1. Benefits payment on minor's behalf to be made to custodian or conservator**

Any payment of any benefit to a minor pursuant to the provisions of this chapter shall be made on the minor's behalf to a custodian or conservator appointed by law. No legal guardian may be deemed a custodian or conservator except by a separate appointment.

**Source:** SL 2006, ch 18, § 1.

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<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

### **3–12–95.2. Benefits payable directly to child at age eighteen— Elimination upon ineligibility**

The conservator and custodian provisions of subdivision 3–12–95(2) and § 3–12–95.1 notwithstanding, the benefit becomes payable directly to a child when the child reaches eighteen years of age. The benefit shall be eliminated when the child becomes ineligible pursuant to subdivision 3–12–47(14).

**Source:** SL 2011, ch 22, § 3.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

### **3–12–95.3. Elimination of family benefit as children become ineligible**

That portion of a family benefit that is payable on account of children pursuant to subdivision 3–12–95(1) shall be eliminated as each child becomes ineligible pursuant to subdivision 3–12–47(14). The benefit shall be eliminated altogether when the youngest child becomes ineligible pursuant to subdivisions 3–12–47(14).

**Source:** SL 2011, ch 22, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

### **3–12–95.4. Family benefits on death of contributing member before retirement and after June 30, 2015**

On the death of a contributing member after June 30, 2015, who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3–12–47(24), or who died while performing usual duties for an employer, and prior to the earlier of the member attaining normal retirement age or the

member's retirement, a family benefit shall be paid on behalf of any child of such member. The total family benefit is the greater of:

- (1) Twenty-five percent of the member's final average compensation at the time of death; or
- (2) The member's unreduced accrued retirement benefit at the time of death.

The family benefit, which shall be paid in monthly installments, shall be equally apportioned among any children of the member and shall be paid on behalf of any child to the conservator or custodian of the child, as applicable. However, if the child is eighteen years of age the benefit is payable directly to the child. As any child becomes ineligible pursuant to subdivision 3-12-47(14), the family benefit shall be reallocated among any remaining children of the deceased member. The family benefit terminates if there are no children of the deceased member pursuant to subdivision 3-12-47(14).

**Source:** SL 2014, ch 20, § 17.

**3-12-95.5. Surviving spouse benefit at age sixty-five where contributing member dies after June 30, 2015**

If no family benefit is being paid pursuant to § 3-12-95.4, a surviving spouse of a contributing member who had acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) or died while performing usual duties for the employer and who died after June 30, 2015, shall, upon attaining the age sixty-five, receive a surviving spouse benefit calculated as follows, whichever is applicable:

- (1) If a family benefit had been paid, sixty percent of the family benefit paid at the time the family benefit ended, increased by the improvement factor from the date the last family benefit was paid; or
- (2) If a family benefit had not been paid, sixty percent of the amount calculated pursuant to subsection (a) or (b), whichever is greater, increased by the improvement factor from the date of the member's death:

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### PUBLIC OFFICERS AND EMPLOYEES

- (a) Twenty-five percent of the member's final average compensation at the time of the member's death; or
- (b) The member's unreduced accrued retirement benefit at the time of the member's death.

The surviving spouse benefit shall be paid in monthly installments for the life of the surviving spouse.

**Source:** SL 2014, ch 20, § 18; SL 2015, ch 26, § 1.

### 3-12-95.6. Early surviving spouse benefit

A member's spouse who would be eligible to receive a surviving spouse benefit at age sixty-five may elect to start the benefit prior to age sixty-five but no earlier than the date on which the surviving spouse attains the age of fifty-five. The early surviving spouse benefit, payable for the life of the surviving spouse, is the surviving spouse benefit reduced by five percent for each full year and prorated for each additional full month between the date the early surviving spouse benefit commences and the date the surviving spouse attains the age of sixty-five.

**Source:** SL 2014, ch 19, § 1, eff. July 1, 2015.

### 3-12-96. Deductions of member's primary social security from benefits

Seventy-five percent of a member's primary social security, without regard to any improvements, shall be deducted from the benefits provided in subdivisions 3-12-95(1) and (2).

**Source:** SL 1974, ch 35, § 51; SL 1977, ch 28, § 10; SL 1986, ch 37, § 6; SL 1994, ch 35, § 1.

#### **Historical and Statutory Notes**

The 1994 amendment to this section applies to allowances under subdivisions 3-12-95(1) and (2) payable on or after July 1, 1994.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

#### **Library References**

Officers and Public Employees  
⇒101.5(1).

**3–12–97. Family benefits in lieu of other death benefits—  
Election by designated beneficiary to withdraw accumulated  
contributions**

Family benefits payable under § 3–12–95 are in lieu of the death benefits payable under any other provision of this chapter except that a designated beneficiary may elect, subject to a deduction for any benefits previously paid, prior to the receipt of the first payment under subdivision 3–12–95(4), to withdraw the member’s accumulated contributions providing there are no children on account of whom benefits are payable under subdivisions 3–12–95(1) and (2).

**Source:** SL 1974, ch 35, § 51; SL 1975, ch 39, § 6.

**Administrative Code References**

Independent status of the surviving spouse benefit if the member was retired or of retirement age, see S.D. Admin. R. 62:01:03:04.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
⇒101.5(1).

**3–12–98. Disability benefits eligibility—Applications before  
July 1, 2015—Required information—Filing deadline**

A contributing member who becomes disabled and who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3–12–47(24) since the member’s most recent entry into active status and prior to becoming disabled or was disabled by accidental means while performing usual duties for an employer, is eligible for a disability benefit if the disability is expected to be of long, continued, and indefinite duration of at least one year. In order to be eligible for a disability benefit, a member must be disabled on the date the member’s contributory service ends. Any member who fails to file an application for disability benefits with the administrator within three years of the date on which the member’s contributory service ends, forfeits all rights to disability benefits. Any information required for a complete application must be received within one year after the application for disability benefits was received. If the required information is not received by the system within

one year after the application is received, the member may reapply. For purposes of this section, a transfer within a participating unit, or a change in employment from one participating unit to another participating unit if there is no break in contributory service, does not constitute a new entry into active status. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

**Source:** SL 1974, ch 35, § 52; SL 1977, ch 28, § 11; SL 1979, ch 30, § 2; SL 1980, ch 31, § 3; SL 1992, ch 3; SL 2004, ch 37, § 3; SL 2005, ch 24, § 5; SL 2014, ch 20, § 24.

**Cross References**

Donation of accrued vested leave to another employee, see § 3-6C-13.

**Administrative Code References**

Disability benefit, see S.D. Admin. R. 62:01:04:00 et seq.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

**Notes of Decisions**

**Similarly situated members** 2

**Sufficiency of evidence** 3

**Test of disability** 1

**1. Test of disability**

Statute defining disability for purposes of state retirement system should be read to require member seeking disability benefits to first satisfy the test of inability to perform usual duties and then satisfy the test of performance of duties of the position of comparable level. SDCL 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Education ⌘ 544

**2. Similarly situated members**

Police officer who was switched from class B member of South Dakota Retirement System (SDRS) to class A member

due to disability was similarly situated to another police officer who was previously switched from class B member to class A member, and thus, officer had to be treated like second officer and awarded disability benefits by SDRS; change that occurred between grant of second officer's application for benefits and SDRS's denial of officer's application was addition to administrative rule and statute of language requiring that member's contributory service end before being eligible for disability allowance and this language was already contained in South Dakota Retirement System (SDRS) rule. *Yellow Robe v. Board of Trustees of South Dakota Retirement System*, 664 N.W.2d 517, 2003 S.D. 67. *Municipal Corporations* ⌘ 187(5)

**3. Sufficiency of evidence**

Record established that school employee who had served as teacher, assistant principal and principal and who had been transferred to teacher duties because of absenteeism due to illness and whose contract as teacher was not renewed was entitled to disability benefits. SDCL 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Education ⌘ 551

Board's finding that 61-year-old school board employee, who had worked as teacher, assistant principal, and principal and who due to absences caused by illness was reassigned as teacher but her contract was not re-

newed because her excessive absences were disruptive, was not entitled to disability benefits was not sustained by "substantial evidence." SDCL 3-12-46 et seq., 3-12-47(18), 3-12-98. *Gourley v. Board of Trustees of South Dakota Retirement System*, 1980, 289 N.W.2d 251. Education ☞ 551

### **3-12-99. Amount of monthly disability benefit—Applications before July 1, 2015**

The disability benefit for the first thirty-six months shall be equal to fifty percent of the member's final average compensation immediately preceding the date of disability, increased by ten percent of such compensation for each child to a maximum of four such children.

Starting with the thirty-seventh month, if the member is eligible for and receiving disability benefits from social security, the disability benefit from the system is equal to the greater of the amount paid during the first thirty-six months less the amount of primary social security or the amount of the member's unreduced accrued retirement benefit as of the date of disability. If the member's unreduced accrued retirement benefit is the greater, it is immediately payable by the system notwithstanding any other provisions to the contrary. In no event may the annual amount of a disability benefit be less than twenty percent of the compensation on which the initial disability benefit was based.

Starting with the thirty-seventh month, if the member is not eligible for and receiving disability benefits from social security, the disability benefit from the system is equal to the greater of twenty percent of the compensation on which the initial disability benefit was based or the amount of the member's unreduced accrued retirement benefit as of the date of disability. If the member's unreduced accrued retirement benefit is the greater, it is immediately payable by the system notwithstanding any other provisions to the contrary. The disability benefit shall be paid only in the form of monthly installments. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

**Source:** SL 1974, ch 35, § 53; SL 1994, ch 32, § 3; SL 2004, ch 40, § 2; SL 2014, ch 20, § 25.

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### Historical and Statutory Notes

SL 1994, ch 32, § 5 provides that this section and § 3-12-99.1 are “applicable only to members whose contributory service ends and whose disability allowance is approved after July 1, 1994.”

SL 2004, ch 40, § 12 provides: “The provisions of this Act do not apply to benefits being paid pursuant to § 3-12-95, 3-12-99, or 3-12-105 prior to July 1, 2004.”

### Administrative Code References

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

### Library References

Officers and Public Employees  
⊞101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### Notes of Decisions

#### Retirement bonus 1

##### 1. Retirement bonus

Retirement bonus, either as lump sum or in installments, is not to be included in calculation of disability benefits payable under this section. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

### 3-12-99.1. Elimination or addition of disability benefit pertaining to children—Applications before July 1, 2015

That portion of a disability benefit that is payable on account of children shall be eliminated as each child becomes ineligible pursuant to subdivision 3-12-47(14). However, that portion of a disability benefit that is payable on account of children shall increase if a disabled member gains an additional child who is eligible pursuant to subdivision 3-12-47(14). All other provisions in § 3-12-101 do not apply to members receiving a disability benefit pursuant to this chapter. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

**Source:** SL 1994, ch 32, § 4; SL 2011, ch 22, § 1; SL 2014, ch 20, § 26.

### Historical and Statutory Notes

SL 1994, ch 32, § 5 provides that this section and § 3-12-99 are “applicable only to members whose contributory service ends and whose disability allowance is approved after July 1, 1994.”

### Library References

Officers and Public Employees  
⊞101.5(1).

Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### 3-12-100. Criteria for determining disability—Uniform application

The Board of Trustees shall set the criteria for determining the disability of members. Methods of disability determination

shall be applied uniformly and consistently to all members applying for the disability benefits.

**Source:** SL 1974, ch 35, § 54.

**Administrative Code References**

Disability benefit, see S.D. Admin. R. 62:01:04:00 et seq.

**Library References**

Officers and Public Employees  
 ⌘ 101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

**Notes of Decisions**

**Similarly situated members 1**

**1. Similarly situated members**

Police officer who was switched from class B member of South Dakota Retirement System (SDRS) to class A member due to disability was similarly situated

to another police officer who was previously switched from class B member to class A member, and thus, officer had to be treated like second officer and awarded disability benefits by SDRS; change that occurred between grant of second officer's application for benefits and SDRS's denial of officer's application was addition to administrative rule and statute of language requiring that member's contributory service end before being eligible for disability allowance and this language was already contained in South Dakota Retirement System (SDRS) rule. *Yellow Robe v. Board of Trustees of South Dakota Retirement System*, 664 N.W.2d 517, 2003 S.D. 67. *Municipal Corporations* ⌘ 187(5)

**3–12–101. Deduction of other public benefits from disability benefit—Reduction when children become ineligible—Applications before July 1, 2015**

Disability benefits shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems. Disability benefits payable on account of children shall be reduced when children become ineligible. In no event may the annual amount of a disability benefit be less than the greater of six percent of the compensation on which the disability benefit is based or six hundred dollars a year.

However, any disability benefit effective prior to July 1, 1994, and payable on or after that date may not be reduced by any benefit payable on account of a veteran's disability or from any insured or self-insured short-term disability plan sponsored by an employer and paid for by the employee or paid for under a salary reduction plan. Further, any disability benefit effective prior to July 1, 1994, and payable on or after July 1, 1995, may not be reduced by any benefit payable on account of a federal military retirement or a federal national guard retirement. The provisions of this section apply to any member whose applica-

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tion for disability benefits is received by the system prior to July 1, 2015.

**Source:** SL 1974, ch 35, § 55; SL 1986, ch 37, § 7; SL 1993, ch 43, §§ 1, 2; SL 1994, ch 36; SL 1995, ch 20; SL 2014, ch 20, § 27.

#### **Administrative Code References**

Member receiving a disability allowance if service ended prior to July 1, 1994, see S.D. Admin. R. 62:01:04:10.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

#### **Library References**

Officers and Public Employees  
⇒101.5(1).

### **3-12-102. Repealed by SL 1990, ch 38**

#### **Historical and Statutory Notes**

The repealed section related to reduction of disability allowance for earnings in employment.

### **3-12-103. Conversion of disability benefit to retirement benefit at retirement age—Applications before July 1, 2015**

When a person who is receiving a disability benefit reaches age sixty-five, or at such later date if there are no eligible children, or if over age sixty at the time of commencement of disability, after a period of five years, the member's disability benefit shall be terminated and thereafter the member shall receive the benefit payable for service retirement at that age, calculated on the projected compensation and projected service. If a person who received a disability benefit returns to employment prior to normal retirement age, the member's credited service shall include the time of disability. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

**Source:** SL 1974, ch 35, § 57; SL 1992, ch 33; SL 2014, ch 20, § 28.

#### **Administrative Code References**

Credited service as employee while disabled, see S.D. Admin. R. 62:01:04:05.02.

Disability benefits, see S.D. Admin. R. 62:01:04:00 et seq.

Lump-sum payments subsequent to annuity payments, see S.D. Admin. R. 62:01:07:09.

Refund of active contributions made during period of disability, see S.D. Admin. R. 62:01:02:06.

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Termination of disability allowance, credited service, see S.D. Admin. R. 62:01:04:05.01.

Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

### Library References

Officers and Public Employees  
⇒101.5(1).

### 3–12–103.1. Termination of disability benefit based on application before July 1, 2015

A member's disability benefit that was based on an application received by the system prior to July 1, 2015, shall terminate thirty days after the earliest of the following:

- (1) The member no longer is disabled;
- (2) The member no longer is subject to the medical condition that caused the disability;
- (3) The member refuses to undergo a medical examination requested by the system for the purpose of reviewing the medical condition that caused the disability;
- (4) The member returns to continuous employment in the position the member held prior to becoming disabled; or
- (5) The member returns to continuous employment in a position of comparable level to the position the member held prior to becoming disabled.

However, a member's disability benefit shall terminate immediately if the member's disability benefit is converted to a service retirement benefit pursuant to § 3–12–103.

**Source:** SL 2006, ch 19, § 1; SL 2014, ch 20, § 29.

**Administrative Code References**  
Employment defined, see S.D. Admin. R. 62:01:01:01.

Medical examination of member receiving disability allowance, refusal, see S.D. Admin. R. 62:01:04:06.

### 3–12–104. Election of additional survivor protection—Commencement and termination of additional contribution

Within three hundred sixty-five days of becoming a member, within ninety days of attaining age thirty-five, or within ninety days of the first anniversary of a marriage, a member may elect to provide the member's spouse with additional survivor protection by increasing the member's contribution by an addition-

al one and five-tenths percent of compensation, which additional contribution may not be matched by the member's employer. The additional contribution shall commence with the first payroll period following the date of the election. It shall continue until the earlier of the member's spouse attaining age sixty-five, the death or disability of the member, the death of the spouse, termination of employment or the termination of the marriage as defined in the rules of the board of trustees. The additional contribution may not be treated as a member contribution for purposes of determining the amount of refund of accumulated contributions. However, the contributions paid prior to January 1, 1979, shall be considered part of accumulated contributions for determining the amount of refund if the member terminates employment. Notwithstanding any other provision of this section, a member who is currently contributing to the system may terminate the additional survivor protection under this section, but all funds contributed for the additional survivor protection shall remain with the system and may not be considered as part of the member's accumulated contributions. For the purposes of implementing this section, the one and two-tenths percent contribution for additional survivor protection was applied to all compensation received on or after July 1, 2004, regardless of when that compensation was earned, and the one and five-tenths percent of compensation shall be applied to all compensation received on or after July 1, 2010, regardless of when that compensation was earned.

**Source:** SL 1974, ch 35, § 58; SL 1976, ch 40, § 4; SL 1977, ch 28, § 12; SL 1978, ch 33, §§ 1, 3; SL 1982, ch 32, § 6; SL 1995, ch 21; SL 1998, ch 15, § 20; SL 1998, ch 21, § 1; SL 2004, ch 41, § 1; SL 2010, ch 22, § 1.

**Administrative Code References**

Administration of additional survivor protection contributions and coverage, see S.D. Admin. R. 62:01:07:13.  
Termination of marriage defined, see S.D. Admin. R. 62:01:01:02.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
⇒101.5(1).

**3–12–104.1. Extension of survivor protection option to current contributing members—Limitation on future extensions**

The additional survivor protection option granted under § 3–12–104 is hereby extended to all current contributing members of the system for a period of three months commencing October 1, 1990, and ending December 31, 1990. In no event may the additional survivor protection be made available to a terminated vested member or to a member receiving a retirement allowance from the system. However, the additional survivor protection option may not be so extended again at any time after June 30, 2004.

**Source:** SL 1982, ch 32, § 7; SL 1986, ch 39; SL 1990, ch 39; SL 2004, ch 41, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283.	§§ 374 to 376, 421 to 430, 433 to 436.

**3–12–104.2. New enrollments in additional survivor protection prohibited**

The provisions of § 3–12–104 notwithstanding, on or after July 1, 2010, no member of the system may enroll in the program created under that section.

**Source:** SL 2010, ch 22, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283.	§§ 374 to 376, 421 to 430, 433 to 436.

**3–12–105. Amount of additional survivor protection benefits—Termination**

The additional survivor protection payable under § 3–12–104, on the death of the member or expiration of benefits that may have been paid pursuant to subdivision 3–12–95(1) because there is no eligible child, entitles the surviving spouse of the member to an annual amount, payable in monthly installments, equal to forty percent of the member's final average compensation, multiplied by the improvement factor for each full twelve-month period between the earlier of

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the date of death or disability of the member and the date the payment of the benefit is due to commence. The additional survivor protection allowance shall continue until the surviving spouse dies or attains age sixty-five, whichever is earlier.

**Source:** SL 1974, ch 35, § 59; SL 1979, ch 30, § 3; SL 1982, ch 34, § 3; SL 2004, ch 40, § 3; SL 2004, ch 41, § 3.

### Historical and Statutory Notes

SL 2004, ch 40, § 12 provides:  
“The provisions of this Act do not apply to benefits being paid pursuant to § 3-12-95, 3-12-99, or 3-12-105 prior to July 1, 2004.”

SL 2004, ch 41, § 4 provides:  
“The provisions of section 3 of this Act do not apply to benefits being paid pursuant to § 3-12-105 prior to July 1, 2004.”

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

## 3-12-106. Early retirement—Reduction of monthly payments

Any vested member can retire in the ten years preceding his normal retirement age and the retirement allowance shall be reduced by the lesser of the following:

- (1) One-fourth of one percent for each full month which remains between the date of commencement of payments and the date the member will reach his normal retirement age; or
- (2) One-fourth of one percent for each full month which remains between the date of commencement of payments and the date the member will reach his reduction age.

**Source:** SL 1967, ch 303, § 7 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3-12-27.1; SL 1970, ch 25, § 6; SL 1974, ch 35, § 60; SL 1978, ch 34, § 1; SL 1986, ch 37, § 8.

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### 1. Retirement bonus

Retirement bonus, either as lump sum or in installments, is not to be included in calculation of early retirement benefits under this section and § 3-12-91. Op.Atty.Gen. Opinion No. 78-41 (Sept. 21, 1978), 1978 WL 33910.

### Notes of Decisions

Retirement bonus 1

**3-12-107. Adjustment of early retirement benefits so greater initial benefits equal later lesser benefits when combined with social security**

Any member who retires before being eligible for social security retirement benefits may elect to receive initial retirement benefit payments from the system in an amount greater than the standard benefit payments computed on the basis of the member's age and earnings at retirement. The greater amount, in conjunction with a later reduced amount, shall be the actuarial equivalent of the normal retirement allowance computed on the basis of age at retirement. The greater amount shall be paid until the member reaches the age of sixty-two, at which time the payment from the system shall be the reduced amount so that, as far as possible, the member's combined monthly retirement income from the system and social security shall approximately equal the greater amount paid prior to age sixty-two.

**Source:** SL 1974, ch 35, § 61; SL 2006, ch 20, § 1.

**Administrative Code References**

Opportunity to rescind election of annuity payment option, overpayments, see S.D. Admin. R. 62:01:07:09.01.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).

**3-12-108. Modified monthly allowance permitted—Time and effect of election**

The Board of Trustees may provide under its rules and regulations for a modified monthly allowance to a member or beneficiary in lieu of the monthly benefit allowances payable under any provision of this chapter, provided that such allowance is not greater than the actuarial equivalent of the allowance due him under this chapter. Any such request must be made in writing on the form prescribed by and filed with the board prior to the date of the first payment of the unmodified allowance. An election of a modified form of payment is effective only after the date of acceptance by the board and may not be modified or revoked after that date without the further consent of the board.

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**Source:** SL 1968, ch 216, § 1; SDCL Supp, § 3-12-41; SL 1970, ch 25, § 11; SL 1974, ch 35, § 62.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

### **3-12-109. Duplicate benefits prohibited unless from another member's contributions**

No person shall be entitled to receive a benefit provided under more than one provision of this chapter at one time, unless such benefit is derived from the contributions of another member.

**Source:** SL 1974, ch 35, § 63; SL 1977, ch 28, § 13.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

### **3-12-110. Refund of unpaid accumulated contributions upon termination—Reversion to system of unclaimed payments**

After all benefits currently or potentially payable under any provision of this chapter have terminated, if the aggregate benefits paid to a member and the member's surviving spouse and minor children are less than the member's accumulated contributions, the amount by which the accumulated contributions exceed total payments made to date shall be paid in a lump sum as provided in this section.

Amounts payable under this section shall be paid as follows:

- (1) To the beneficiary or entity designated by the member, if any is designated; or
- (2) If no beneficiary or entity is designated, then to the member's surviving spouse; or
- (3) If no beneficiary or entity is designated and there is no surviving spouse, then to all surviving children, irrespective of age, on a share alike basis; or
- (4) If no beneficiary or entity is designated, there is no surviving spouse, and there are no surviving children, then to the member's estate.

If no claim for payment due upon the death of a deceased member is made within three years from date of death, the payment shall revert to the system. However, a claim may be honored after the expiration of the three-year reversion period if, in the opinion of the administrator, payment of the claim is warranted by exceptional circumstances.

**Source:** SL 1974, ch 35, § 64; SL 1986, ch 37, § 9; SL 1995, ch 24, § 16; SL 1997, ch 29, § 1; SL 1998, ch 15, § 21; SL 1999, ch 15, § 7; SL 2006, ch 21, § 1; SL 2010, ch 20, § 12; SL 2014, ch 20, § 30; SL 2015, ch 27, § 1.

**Administrative Code References**

Beneficiary designated by qualified domestic relations order, see S.D. Admin. R. 62:01:07:06.

Rollover of beneficiary payment by surviving spouse or other beneficiary, see S.D. Admin. R. 62:01:07:10.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⇒101.5(1).

**3–12–111. Suspension of retirement allowance during reemployment prior to July 1, 2004—Recalculation of additional allowance**

If a retired member whose benefits have been reduced pursuant to § 3–12–106 becomes employed as a permanent full-time employee by a participating unit prior to July 1, 2004, the payment of the member's retirement allowance, including the annual increase pursuant to § 3–12–88, shall be suspended during such period of reemployment. If the member remains in such reemployment for at least three years pursuant to the provisions of § 3–12–82 and then again retires, the member's additional allowance shall be recalculated to consider only the member's credited service and final compensation earned during reentry.

**Source:** SL 1970, ch 25, § 13; SDCL Supp, § 3–12–29.3; SL 1974, ch 35, § 65; SL 1982, ch 32, § 8; SL 1986, ch 37, § 10; SL 1997, ch 28, § 2; SL 2004, ch 38, § 3.

**Historical and Statutory Notes**

SL 2004, ch 38, § 5 provides:

“The provisions of law in effect prior to July 1, 2004, continue to apply to any retired member whose benefits were not

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suspended pursuant to the provisions of § 3-12-111 and who reentered active status prior to July 1, 2004.”

SL 1997, c. 28, §§ 3 and 4, provide:

“Section 3. The provisions of this Act apply to any member whose benefits are suspended pursuant to § 3-12-111 on the effective date of this Act. The provisions of this Act apply to any member whose benefits previously were suspended pursuant to § 3-12-111, if the member elects to have the provisions apply.

“Section 4. Any increase in a member’s retirement benefit as a result of the provisions of this Act shall be prospective only from the effective date of this Act.”

### Library References

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### Notes of Decisions

#### Proration 2

#### Retirees under old system 1

##### 1. Retirees under old system

Retirees under old law enforcement officers retirement system may return to work for the state and earn an additional benefit under the present retirement system, prior to normal retirement age, unless their annuity under the old system is suspended while so employed. Op.Atty.Gen. Opinion No. 79-4, 1979 WL 41889.

##### 2. Proration

Suspension of 1/30 of monthly benefits for one day’s work prior to retirement age is appropriate. Op.Atty.Gen. Opinion No. 78-52 (Nov. 6, 1978), 1978 WL 33921.

### **3-12-111.1. Suspension of retirement allowance during reemployment for members who reentered employment between July 1, 2004 and April 1, 2010—Allowance upon subsequent retirement**

If a retired member whose benefits have been reduced pursuant to § 3-12-106 becomes employed as a permanent full-time employee by a participating unit on or after July 1, 2004, but prior to April 1, 2010, the payment of the member’s retirement allowance shall be suspended during the period of reemployment. If the member remains in reemployment for at least three years pursuant to the provisions of § 3-12-82, the member upon subsequent retirement shall receive an additional allowance based upon the member’s credited service and final compensation earned during the reentry. Only the member’s credited service from the subsequent employment shall be taken into account in calculating a reduction pursuant to § 3-12-106, if any, in the member’s additional allowance. If the member remains in reemployment for a period of less than three years, the member upon subsequent retirement shall receive a refund of the member’s accumulated contributions. In addition, no matter the duration of the member’s reemployment, the annual increase applied to the original allowance

pursuant to § 3–12–88 shall be eliminated for the period of reemployment.

**Source:** SL 2004, ch 38, § 4; SL 2010, ch 20, § 13; SL 2010, ch 23, § 7, eff. Apr. 1, 2010.

**Historical and Statutory Notes**

SL 2010, ch 23, § 10 provided that “Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010.”

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 Ⓒ101.5(1).

**3–12–112. Benefits payable only as monthly allowance—  
 Lump-sum payments prohibited unless specified**

A member in the system may claim the benefits provided for in this chapter only in the form of a monthly benefit payment and only after such time as these benefits are payable. Unless otherwise specifically provided, there shall be no circumstances which shall allow a member or a former member of the system a lump-sum cash payment in lieu of the normal retirement allowance.

**Source:** SL 1967, ch 303, § 8; SDCL § 3–12–29; SL 1968, ch 216, § 1; SL 1970, ch 25, § 7; SL 1974, ch 35, § 66.

**Library References**

Officers and Public Employees  
 Ⓒ101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

agreement on division of husband’s retirement fund and determining wife’s entitlement to portion of the fund outside contractual provision within the agreement; although word “benefit” was not described within the agreement, statute governing South Dakota Retirement System allowed husband upon retiring from system to claim his retirement “benefits” in the form of a monthly payment, which he did, and provision in settlement agreement entitled wife to benefits whenever husband should draw on his benefits. SDCL 3–12–47(11), 3–12–112. *Divich v. Divich*, 640 N.W.2d 758, 2002 S.D. 24. Divorce Ⓒ 925

**Notes of Decisions**

**Benefit 1**

**1. Benefit**

Terms “benefit” and “benefits” in the retirement provisions of parties’ divorce settlement agreement was not ambiguous, and, thus, trial court was not warranted in finding there was never any

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**3-12-113. Time of termination of benefits**

In the event of the death of a member who is receiving benefits under this chapter, or on whose account a benefit is payable or children are no longer qualified, the benefit payable to or on account of that person shall be terminated on the last day of the month in which an event occurs which effects a termination.

**Source:** SL 1974, ch 35, § 67.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
§101.5(1).	436.
Westlaw Topic No. 283.	

**3-12-114. Correction of records—Adjustment for underpayment or overpayment—Limitation**

If any change or error in the records of the system or any participating unit results in any person receiving from the system less than the person would have been entitled to receive had the records been correct, the administrator shall correct the error and, as far as practicable, shall adjust the payment to provide the person the amount to which the person is correctly entitled.

If any change or error in the records of the system or any participating unit results in any person receiving from the system more than the person would have been entitled to receive had the records been correct, the administrator shall correct the error and, as far as practicable, shall recover the overpayment to reflect the amount to which the person is correctly entitled. The board shall promulgate rules, pursuant to chapter 1-26, concerning the methods by which an overpayment shall be repaid, including an actuarial equivalent. However, the recovery of an overpayment is limited to the amount attributable to any error that occurred during the six-year period immediately prior to the discovery of the error. This limitation does not apply in the case of fraud, intentional misrepresentation, material omission, or other fault on the part of a member or beneficiary.

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**Source:** SL 1959, ch 84, § 38; SDC Supp 1960, § 15.3942; SL 1961, ch 255, § 40; SDCL §§ 9-15-68, 13-45-70; SL 1970, ch 25, § 13; SDCL Supp, § 3-12-44; SL 1974, ch 35, § 68; SL 2015, ch 28, § 1.

### **Administrative Code References**

Member repayment of overpayments, see S.D. Admin. R. 62:01:07:12.

### **Library References**

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

### **3-12-115. Exemption of contributions and benefits from taxation and process**

The rights of a person to a benefit, return of accumulated contributions, the benefit itself, any optional benefits and any other right accrued or accruing under the provisions of this chapter and all moneys belonging to the system are hereby exempt from any state, county, municipal, or other local tax and may not be subject to execution, garnishment, attachment, operation of bankruptcy or insolvency laws or any other process of law whatsoever and shall be unassignable, except as required under applicable law, including any qualified domestic relations order as defined in § 414(p) of the Internal Revenue Code, or as is otherwise specifically provided in this chapter.

**Source:** SL 1959, ch 84, § 40; SDC Supp 1960, § 15.3943; SL 1961, ch 255, § 42; SDCL §§ 9-15-70, 13-45-69; SL 1970, ch 25, § 13; SDCL Supp, § 3-12-45; SL 1974, ch 35, § 69; SL 1985, ch 24, § 3; SL 2013, ch 20, § 11.

### **Administrative Code References**

Beneficiary designated by qualified domestic relations order, see S.D. Admin. R. 62:01:07:06.

Independent status of the surviving spouse benefit if the member was retired or of retirement age, see S.D. Admin. R. 62:01:03:04.

Prospective nature of qualified domestic relations orders, see S.D. Admin. R. 62:01:07:07.

### **Law Review and Journal Commentaries**

Craig, A "Rogues' Paradise?": A Review of South Dakota's Property Ex-

emptions and a Call for Change, 59 S.D. L. Rev. 257 (2014).

Obtaining an equitable distribution of retirement plans in a divorce proceeding, 49 S.D. L. Rev. 141 (2003).

### **Library References**

Officers and Public Employees  
⇒101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

**Research References**

**ALR Library**

Attachment or garnishment, employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 A.L.R.3d 711.  
 Construction and Application of 28 U.S.C.A. § 2403 (And Similar Pre-

decessor Provisions), Concerning Intervention by United States or by State in Certain Federal Court Cases Involving Constitutionality of Statutes, 147 ALR, Federal 613.

**Forms**

Asset Protection: Legal Planning, Strat. & Forms ¶ A.42, South Dakota (Opt Out State).

**3-12-116. Lump-sum payments where designated beneficiary does not survive member—Reversion to system of unclaimed payments**

If a designated beneficiary does not survive the member, any lump-sum payment that may be due shall be payable to the member’s surviving spouse. If there is no surviving spouse, the payment shall be payable to all of the member’s surviving children, irrespective of age, on a share-alike basis. If there is no surviving spouse and there are no surviving children, the payment shall be payable to the estate of the deceased member. If no claim for payment due upon the death of a deceased member is made within three years from date of death, the payment shall revert to the system. However, a claim may be honored after the expiration of the three-year reversion period if, in the opinion of the administrator, payment of the claim is warranted by exceptional circumstances.

**Source:** SL 1967, ch 303, § 8 as added by SL 1968, ch 216, § 1; SDCL Supp, § 3-12-29.1; SL 1974, ch 35, § 70; SL 2006, ch 21, § 2.

**Administrative Code References**

Rollover of beneficiary payment by surviving spouse or other beneficiary, see S.D. Admin. R. 62:01:07:10.

Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).

**3-12-117. Investment of assets by investment council—Pooling of funds—Standards for investment—Compliance with federal divestiture enactments**

The State Investment Council as provided in § 4-5-12 is responsible for the investment of the assets of the system. The Investment Council may pool the several retirement funds for

investment purposes and the investment of such funds is not restricted by the provisions of § 4–5–26, but is governed by the provisions of § 4–5–27. However, the assets of the system may not be used as venture capital, nor may the assets of the system be managed in any manner for the purposes of social investment. The State Investment Council shall invest member trust funds in a manner that is solely designed to provide for the exclusive benefit of the members and benefit recipients of the system. However, the foregoing provisions notwithstanding, the State Investment Council shall establish a shareholder activism policy to engage and promote compliance with federal divestiture enactments by the United States Congress and to recognize the risks associated with companies doing business in the countries identified. Once the United States Congress has acted, the State Investment Council may initiate the shareholder activism policy on its own accord, or shall do so at the direction of the Legislature by resolution. The State Investment Council shall report semi-annually and fifteen months after July 1, 2010 on council actions related to the shareholder activism policy. The report shall include an analysis of the success of the policy in accomplishing the goal of promoting compliance with the federal enactments and its impact on all sales of affected companies.

**Source:** SL 1974, ch 35, § 71; SL 1989, ch 39; SL 2010, ch 21, § 3.

#### **Library References**

Officers and Public Employees  
 ⇒101.5(1).  
 Westlaw Topic No. 283.  
 C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to  
 436.

#### **Research References**

##### **Treatises and Practice Aids**

Bogert - the Law of Trusts and Trustees § 657, South Dakota.

#### **Notes of Decisions**

##### **Venture capital investments 1**

##### **1. Venture capital investments**

While this section indicates that the investment council has more flexibility in investing retirement funds, § 4–5–27 also applies in the setting of venture capital investments of the state retirement system. Op.Atty.Gen. Opinion No. 88–32, 1988 WL 483264.

### **3–12–118. Quadrennial independent report on investment performance—Contents of report**

The Board of Trustees shall retain the services of an independent contractor, not involved in the investment process, to make a report to the board not less than every four years on the

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investment performance results of the assets of the retirement funds. The report shall include, but not be limited to, the investment for the total portfolio and each major investment category thereof; a comparison of the investment return on the common stocks in the portfolio to market indices in general use and to the results achieved by other institutional investors of pension funds; and an appraisal of the success of the management of the actively traded bond portfolio, including a comparison of the return on the bonds in the portfolio to the bond indices in general use and a quantitative estimate of the aggregate gains or losses arising out of the portfolio transactions, both current exchanges and those that have to be worked out over time by a series of trades.

**Source:** SL 1974, ch 35, § 72.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
☞101.5(1).	
States ☞72.	C.J.S. States § 229.
Westlaw Topic Nos. 283, 360.	

#### 3–12–118.1. Alternative benefit enhancement methodology

The board may develop an alternative benefit enhancement methodology based on investment performance that mitigates risk within the South Dakota Retirement System. The funding and operational provisions related to the alternative benefit enhancement methodology shall be submitted for legislative approval prior to implementation.

**Source:** SL 2012, ch 27, § 1.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
☞101.5(1).	
Westlaw Topic No. 283.	

#### 3–12–119. Review of investment policy when return lower than average—Report to Governor and Legislature

In the event the investment return on the common stock portfolio or bond portfolio is lower than the average return achieved by other institutional investors of pension funds, then the Investment Council shall review the way in which the assets

are being invested and the sources of investment advice being utilized to determine what changes, if any, are desirable to produce an investment return equal to or greater than the average, and shall make a report to the Governor and the Legislature on the investment performance results and any changes necessary to improve the investment return.

**Source:** SL 1974, ch 35, § 73.

<b>Library References</b>	
Officers and Public Employees § 101.5(1). States § 72. Westlaw Topic Nos. 283, 360.	C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436. C.J.S. States § 229.

### **3–12–120. Annual actuarial valuation of system—Scope of valuation**

To determine and verify the adequacy of the members and employer contributions to the system, an actuarial valuation of the system shall be made by an approved actuary annually.

The actuarial valuation shall include:

- (1) A demonstration of the relationship of the current member and employer contributions, expressed as a percentage of payroll, to the actuarial requirement; and
- (2) The current year's funded ratio as well as the ratios from the prior actuarial valuations performed after July 1, 1974.

**Source:** SL 1974, ch 35, § 74; SL 1996, ch 27; SL 2004, ch 42, § 13.

<b>Library References</b>	
Officers and Public Employees § 101.5(1). Westlaw Topic No. 283.	C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

#### **3–12–120.1. Independent actuarial review of retirement system mandated—Issues**

An independent actuarial review shall be completed of the South Dakota Retirement System, focusing upon issues of equity regarding member benefits, including, but not limited to, the class A alternate formula, class differences, length of service issues, purchase of credited service, cost of living allowance,

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death and disability benefits, married members, members with younger spouses, life expectancy, early retirement, and reemployment after retirement.

**Source:** SL 2000, ch 26, § 1.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
☞101.5(1).	
Westlaw Topic No. 283.	

### 3–12–120.2. Committee to request proposals—Designation of actuary—Date of report

The Retirement Laws Committee shall submit a request for proposals, and shall designate an approved actuary to carry out the study no later than July 1, 2000. The approved actuary shall report its findings to the Retirement Laws Committee no later than December 1, 2000.

**Source:** SL 2000, ch 26, § 2.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
☞101.5(1).	
States ☞72.	C.J.S. States § 229.
Westlaw Topic Nos. 283, 360.	

### 3–12–120.3. Payment for review

This independent actuarial review shall be paid for out of the South Dakota Retirement System fund. Expenditures shall be disbursed on warrants drawn by the state auditor and shall be supported by vouchers approved by the administrator of the system.

**Source:** SL 2000, ch 26, § 3.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
☞101.5(1).	
States ☞72.	C.J.S. States § 229.
Westlaw Topic Nos. 283, 360.	

### 3–12–121. Actuarial assumptions on which valuation based—Report of change

The actuarial valuation required by § 3–12–120 shall be based on actuarial assumptions adopted by the Board of Trus-

tees as a result of an actuarial experience analysis. The board may not make any change in the actuarial assumptions unless the approved actuary retained to make the actuarial valuation certifies that the change is reasonable. If the board makes any such change, it shall report the change to the Governor and to the Retirement Laws Committee. The report shall include the actuary's and board's analysis of the conditions that led to the change.

**Source:** SL 1974, ch 35, § 76; SL 1980, ch 31, § 2; SL 2004, ch 42, § 2.

<p><b>Library References</b> Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283.</p>	<p>C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.</p>
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**3-12-122. System funding review—Report required for specified conditions—Recommended changes**

The board shall review the funding of the system and shall make a report to the Governor and the Retirement Laws Committee if any of the following conditions exist as of the latest annual actuarial valuation of the system:

- (1) The contributions do not equal the actuarial requirement for funding;
- (2) The funded ratio is less than eighty percent, or a ratio based on the market value of assets is less than eighty percent; or
- (3) The market value of assets is less than ninety percent of the actuarial value of assets.

The report shall include an analysis of the conditions and recommendations for the circumstances and timing for any future benefit changes, contribution changes, or any other corrective action, or any combination of actions, to improve the conditions. Based on this report and the recommendations of the board, the Legislature may adopt benefit changes, contribution changes, or any other corrective action, or any combination of actions, to improve the conditions set out in this section.

If any of the conditions set out in this section exist for a period of three consecutive annual actuarial valuations, the

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board shall recommend benefit reductions, contribution changes, or any other corrective action, or any combination of actions, for approval by the Legislature and the Governor, effective as soon as possible, to improve the conditions set out in this section.

**Source:** SL 1974, ch 35, § 75; SL 1986, ch 37, § 12; SL 2004, ch 42, § 1; SL 2008, ch 20, § 15; SL 2013, ch 21, § 1.

### **Historical and Statutory Notes**

SL 2008, ch 23, § 5 provides: "The provisions of sections 1 to 4, inclusive, of this Act [§§ 3-12-91, 3-12-92, 3-12-92.4, and 3-12-92.6] notwithstanding, if the conditions described in § 3-12-122 exist, the board may recommend and the Legislature may adopt recommendations to decrease or eliminate the benefit improvements granted by this Act. Any such reductions or elimination need not be uniform between or among classes of members.

There may be no legal recourse by any affected party in any manner to enjoin or otherwise to halt or delay the reductions or elimination."

### **Library References**

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

## **3-12-123. Intent to protect previously retired members of systems**

It is the intent of the Legislature of the State of South Dakota to provide improved benefits for the already retired members of the retirement systems consolidated into the South Dakota Retirement System created by this chapter and to provide the financial resources necessary to adequately pay for the improved benefits.

**Source:** SL 1974, ch 35, § 77.

### **Library References**

Officers and Public Employees  
⇒101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to 436.

## **3-12-124. Increase in benefits for previously retired members of systems**

Any retired members of the Supreme and Circuit Court Judicial Retirement System, district county court and municipal court judges retirement program, South Dakota Teachers Retirement System, South Dakota Municipal Retirement System, South Dakota Law Enforcement Retirement System,

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South Dakota Public Employees Retirement System and State Cement Plant Retirement Program as of June 30, 1974, who were receiving or eligible to receive a retirement allowance shall be entitled to an increased monthly annuity commencing with the payment due on or after July 1, 1974, equal to the greater of:

- (1) One hundred ten percent of the annuity he was entitled to on June 30, 1974, under the retirement system of which he is a retired member, or
- (2) Ten dollars times the years of credited contributory service or fraction thereof, under the retirement system of which he is a retired member, to a maximum of one hundred dollars.

The time, manner and form of payment of the retirement allowance is not modified by the change in benefits provided by this section.

**Source:** SL 1974, ch 35, §§ 78, 79.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
⇒101.5(1).	436.
Westlaw Topic No. 283.	

**3-12-125. Adjustment of increase for retired members electing optional payment or early retirement**

The amount calculated under subdivision 3-12-124(2) will be adjusted to its actuarial equivalent if the retired member had elected an optional form of payment other than the normal form provided by the retirement system of which he is a retired member, or if the age of a retired member is less than the normal retirement age necessary for receiving a normal retirement allowance as provided by the retirement system of which he is a retired member.

**Source:** SL 1974, ch 35, § 79.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
⇒101.5(1).	436.
Westlaw Topic No. 283.	

**§ 3-12-126**

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**3-12-126. Previously retired members paid from consolidated fund**

Notwithstanding the repeal on July 1, 1974, of chapters 3-12; 3-13; 9-15; 13-45; certain provisions of chapter 16-8; chapter 16-11A, and certain provisions of chapter 33-13, persons retired under those programs, and teachers retired under the provisions of chapter 51 of the Session Laws of 1939, as amended, who retired pursuant to that act prior to July 1, 1951, and beneficiaries of deceased retirees of those programs, to the extent they are being paid benefits on July 1, 1974, shall be secured in the benefits provided by those provisions from the fund established pursuant to this chapter.

**Source:** SL 1974, ch 35, § 82.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283.	§§ 374 to 376, 421 to 430, 433 to 436.

**3-12-127. Members of consolidated systems entitled to benefits of prior law—Retention by administrator of Compiled Laws and supplements**

Notwithstanding the repeal on July 1, 1974, of chapters 3-12; 3-13; 9-15; 13-45; certain provisions of chapter 16-8; chapter 16-11A; and certain provisions of chapter 33-13, all members of systems established thereunder shall be entitled to retire at the age, with the length of service and the benefits available to them under those provisions or the provisions of this chapter. For the purposes of this section, the administrator shall retain as part of the permanent files of his office all volumes of the South Dakota Compiled Laws, together with the 1973 pocket supplements thereto.

**Source:** SL 1974, ch 35, § 83; SL 1975, ch 39, § 7.

<b>Library References</b>	<b>Notes of Decisions</b>
Officers and Public Employees ⇒101.5(1). Westlaw Topic No. 283. C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.	<b>Return to work 1</b> <b>1. Return to work</b> Retirees under old law enforcement officers retirement system may return to work for the state and earn an additional benefit under the present retirement

system. Op.Atty.Gen. Opinion No.  
79-4, 1979 WL 41889.

### 3-12-128. Citation of chapter

This chapter shall be cited as the South Dakota Retirement Act.

**Source:** SL 1974, ch 35, § 84.

### 3-12-129. Calculating benefits of air rescue firefighter

For purposes of determining the benefits of an air rescue firefighter, for credited service earned prior to July 1, 1992, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after June 30, 1992, the benefits shall be calculated pursuant to § 3-12-92.

**Source:** SL 1992, ch 34, § 3.

**Library References**  
States ~~64~~64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

### 3-12-130. Conversion of credited service

A current contributing Class B member other than a justice, judge, or magistrate judge, may convert credited service as a county sheriff or deputy county sheriff prior to January 1, 1980, or credited service as a county sheriff or deputy county sheriff while not certified from January 1, 1980, to June 30, 1988, inclusive; credited service as a police officer while not certified from July 1, 1983, to June 30, 1988, inclusive; credited service as a penitentiary correctional staff member prior to July 1, 1978; credited service as a conservation officer prior to July 1, 1983; credited service as a parole agent prior to July 1, 1991; and credited service as an air rescue firefighter prior to July 1, 1992, from credited service as a Class A member with benefits provided in accordance with § 3-12-91 to credited service as a Class B member other than a justice, judge, or magistrate judge, with benefits provided in accordance with § 3-12-92, by election to make, or have made on the member's behalf, contributions based on the higher of the member's current compensation, or the member's final average compensation calculated as if the member retired on the date of election, at an actuarially-

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determined percentage times each year of service for which the member wishes to receive such Class B credit. The provisions of this section also apply to a current contributing Class B member, other than a justice, judge, or magistrate judge, who previously has purchased equivalent public service pursuant to the provisions of § 3-12-84.

Payment of a deposit with the system for the conversion of credited service in accordance with this section shall be determined and due at the time the notice of intention to make the payment is received by the system. The amount due may be paid by periodic level installments over a period of up to ten years, the value of which, if discounted for interest at the assumed rate of return, is equal to the amount due at the date of the notice. If a member dies before completion of the installment payments, the surviving spouse may complete the payments due the system, but unless the payments are being made by a participating unit, the amount shall be paid in full within ninety days of the member's death or retirement. If the periodic payments are not completed or paid when due, the administrator may make a pro rata adjustment to the credited service, benefits payable under this chapter or schedule of payments to allow for the default.

If the credited service of any member or group of members becomes Class B credited service on a prospective basis on or after July 1, 1993, the prior credited service as a Class A member may be converted to Class B credited service in accordance with this section. If a jailer becomes a Class B member other than a justice, judge, or magistrate judge pursuant to subdivision 3-12-47(25) or subdivision 3-12-47(55), the jailer is eligible to convert prior credited service as a jailer under this section.

**Source:** SL 1993, ch 44, § 1; SL 1997, ch 27, § 3; SL 1999, ch 14, § 3; SL 2003, ch 24, § 1; SL 2004, ch 39, § 3; SL 2004, ch 40, § 9; SL 2008, ch 20, § 16; SL 2012, ch 26, § 12.

**Library References**

Officers and Public Employees  
⊕101.5(1).  
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

**3–12–130.1. Purchase of certain public service as class B service**

If a current contributing class B member of this system, other than a justice, a judge, or a magistrate judge, has equivalent public service for which the member is not entitled to retirement benefits from another public retirement system, the member may elect to deposit or have deposited on the member's behalf an amount equal to an actuarially-determined percentage times the appropriate class B rate of contribution multiplied by the higher of the member's annual compensation at the time of making the election, or the member's final average compensation calculated as if the member retired on the date of the election, for each year of equivalent public service for which the member wishes to receive credit as a class B member.

**Source:** SL 1997, ch 27, § 2; SL 2004, ch 39, § 4; SL 2004, ch 40, § 10.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to
⇒101.5(1).	436.
Westlaw Topic No. 283.	

**3–12–131. Eligibility for benefits upon becoming full-time employee within twelve months after withdrawal**

Notwithstanding any provision of this chapter to the contrary, whenever a member withdraws accumulated contributions under § 3–12–76 and becomes a permanent full-time employee within twelve months after withdrawal, contributions must have been made to the system for a period of twelve consecutive months before the member is eligible for benefits pursuant to § 3–12–95. The member shall furthermore be ineligible to apply for additional survivor protection pursuant to § 3–12–104 as a new member of the system. To be eligible for a disability benefit pursuant to § 3–12–98 or 3–12–201, the member must have at least three years of contributory service since the date of the last withdrawal unless the member was disabled by accidental means while performing the usual duties for the employer.

**Source:** SL 1993, ch 39, § 2; SL 2014, ch 20, § 31.

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**Library References** C.J.S. Officers and Public Employees  
Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to  
⊞101.5(1). 436.  
Westlaw Topic No. 283.

### 3-12-132. Retirement benefits for certain city of Aberdeen employees

To determine the retirement benefits of Aberdeen ambulance attendants, campus security officers, and court services officers, for credited service earned prior to July 1, 1993, the benefits shall be calculated pursuant to § 3-12-91 and for credited service after June 30, 1993, the benefits shall be calculated pursuant to § 3-12-92.

**Source:** SL 1993, ch 38, § 3.

**Library References** C.J.S. Municipal Corporations §§ 863  
Municipal Corporations ⊞220(9). to 881.  
Westlaw Topic No. 268.

### 3-12-133. Aberdeen firefighters to participate in system

On July 1, 1994, all members of the municipality of Aberdeen firemen's relief and pension fund on June 30, 1994, including all retirees and benefit recipients, shall become members of the system. Each individual shall receive credited service under the system for all service earned under the municipality of Aberdeen firemen's relief and pension fund.

**Source:** SL 1994, ch 37, § 1.

**Library References** 740 to 744, 752 to 753, 756, 763 to  
Municipal Corporations ⊞200(2). 764.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

### 3-12-134. Eligible benefits for Aberdeen firefighters

Each individual described in § 3-12-133 shall receive the same benefit provided by the municipality of Aberdeen firemen's relief and pension fund on June 30, 1994, and the benefit shall be improved on July 1, 1994, and thereafter in accordance with § 3-12-88. The benefits of the individuals described in § 3-12-133 who are entitled to receive benefits from the municipality of Aberdeen firemen's relief and pension fund as of

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July 1, 1994, shall be paid from the fund established by this chapter.

**Source:** SL 1994, ch 37, § 2.

<b>Library References</b>	740, 742 to 744, 752 to 754, 756,
Municipal Corporations Ⓒ200(7).	763 to 764.
Westlaw Topic No. 268.	
C.J.S. Municipal Corporations §§ 698	
to 701, 709, 711 to 712, 732 to 733,	

**3–12–135. Amount to be paid by municipality of Aberdeen**

The municipality of Aberdeen shall pay to the system an amount equal to the present value of all benefits earned by individuals described in § 3–12–133 up to July 1, 1994, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1992. That amount shall be determined on July 1, 1994, by the system’s actuary. Any amount to be paid to the system by the municipality of Aberdeen which exceeds the value of the assets of the municipality of Aberdeen firemen’s relief and pension fund, determined as of the date of transfer, shall be paid pursuant to the provisions of § 3–12–69.

**Source:** SL 1994, ch 37, § 3.

<b>Library References</b>	C.J.S. Municipal Corporations §§ 863
Municipal Corporations Ⓒ220(9).	to 881.
Westlaw Topic No. 268.	

**3–12–136. Funds from Aberdeen municipality considered member contributions**

All amounts transferred to the system from the municipality of Aberdeen firemen’s relief and pension fund which, under the Aberdeen firemen’s relief and pension fund, were credited to the accounts of individual employees are considered member contributions under this chapter.

**Source:** SL 1994, ch 37, § 4.

<b>Library References</b>	C.J.S. Municipal Corporations §§ 863
Municipal Corporations Ⓒ220(9).	to 881.
Westlaw Topic No. 268.	

**§ 3-12-138**

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**Repealed**

**3-12-138. Repealed by SL 1997, ch 26, § 6**

**Historical and Statutory Notes** allowed for certain retirees depending on date and circumstances of retirement.  
The repealed section related to additional percentage of final compensation

**3-12-139. No additional benefits where allowance terminated prior to July 1, 1994**

No member or beneficiary whose retirement allowance terminated prior to July 1, 1994, may receive any additional benefits pursuant to § 3-12-138.

**Source:** SL 1994, ch 34, § 7.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3-12-140. Regaining credited service lost due to mandatory refunds**

Any current contributing member who was subject to the withdrawal provisions as a nonvested member from the South Dakota Retirement System or any predecessor public retirement system may redeposit accumulated contributions with compound interest at the current effective rate between the date of withdrawal and the date of redeposit in accordance with § 3-12-80, or to purchase the prior credited service in accordance with § 3-12-83 to include any applicable noncontributory service in addition to the credited service so purchased, if the redeposit or purchase is initiated between July 1, 1995, and June 30, 1996.

**Source:** SL 1995, ch 22.

<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

**3-12-141. Employer certification of inability to provide effective accommodations or comparable employment—Applications before July 1, 2015**

No application for disability benefits pursuant to § 3-12-98 may be determined until the employer has certified to the

system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide to the member either effective accommodations in the member's current position or comparable level employment in another position.

**Source:** SL 1995, ch 23, § 2; SL 2006, ch 19, § 2; SL 2014, ch 20, § 32.

**Administrative Code References**

Criteria for determining disability, see S.D. Admin. R. 62:01:04:09, 62:01:04:09.01.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).

**3–12–142. Disability documentation inadmissible for proceedings relative to workers' compensation**

An application for disability benefits pursuant to this chapter, any associated evidence and documents, and the disability determination and decision related thereto shall be inadmissible and nondeterminative for any associated proceeding relative to Title 62.

**Source:** SL 1995, ch 23, § 3.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Notes of Decisions**

**Stipulation for admission 1**

**1. Stipulation for admission**

ALJ's failure to consider state retirement system physician evaluation forms which stated that workers' compensation claimant's condition was due to injury arising out of employment, despite stipulation to admit the forms as evidence, did not constitute reversible error, as evidence supported ALJ's determination that workplace injury did not cause claimant's symptoms; parties

did not stipulate that the evidence was to be taken as conclusive, ALJ considered all the medical records admitted into the record, including physicians' opinions, personal evaluations and notes, and rejected the opinions as lacking foundation due to their failure to fully review all of claimant's medical records, forms would not have bolstered the physicians' credibility or provided more foundation for their opinions, and ALJ simply found another physician's live testimony to be more credible. Gerlach v. State, 747 N.W.2d 662, 2008 S.D. 25. Workers' Compensation ⇨ 1937

ALJ considering state employee's workers' compensation claim could not disregard state retirement system physician evaluation forms, as parties had stipulated to the admission of the forms without objection. Gerlach v. State,

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747 N.W.2d 662, 2008 S.D. 25. Workers' Compensation ☞ 1172

**3-12-143. Maximum amount of disability benefit—Reporting earned income—Applications before July 1, 2015**

For the first thirty-six months of a disability benefit provided by § 3-12-99, the maximum amount that a member may receive in any calendar year from the disability benefit and earned income, as defined in § 32(c)(2) of the Internal Revenue Code, is one hundred percent of the member's final average compensation. Starting with the thirty-seventh month of such disability benefit, the maximum amount that a member may receive in any calendar year from disability benefits provided by the federal Social Security Act equal to the primary insurance amount, the disability benefit provided by this chapter and earned income, as defined in § 32(c)(2) of the Internal Revenue Code, is one hundred percent of the member's final average compensation. The maximum amount shall be indexed for each full fiscal year during which the member is eligible for such disability benefit by the improvement factor defined in subdivision 3-12-47(41). Any amount exceeding this maximum amount shall reduce each monthly disability benefit payable pursuant to § 3-12-99 in the following fiscal year on a pro rata basis.

Any member eligible to receive a disability benefit shall report to the system in writing any earned income of the member. The report shall be filed with the system no later than May thirty-first following the end of each calendar year in which a disability benefit is paid. A disabled member may file a signed copy of the member's individual income tax return in lieu of the report. No report or return need be filed for the calendar year in which the member dies or converts to a normal or early retirement benefit under this chapter. The disability benefit of any member failing to file a report or return as required in this section shall be suspended until the report or return is filed. The reduction may occur, however, only if a disability benefit is being paid by the system, but may not reduce the disability benefit below the minimum provided for in § 3-12-99.

This section applies to any member receiving or entitled to receive a disability benefit pursuant to § 3–12–98.

**Source:** SL 1995, ch 23, §§ 4, 5; SL 2004, ch 40, § 4; SL 2012, ch 26, § 13; SL 2013, ch 20, § 12; SL 2014, ch 20, § 33.

**Administrative Code References**

Disability allowance, income to be included in earned income, see S.D. Admin. R. 62:01:04:13.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).

**3–12–144 to 3–12–152. Repealed by SL 1998, ch 15, §§ 22 to 30**

**Historical and Statutory Notes**

Section 3–12–144 related to election to provide portable retirement option.

Section 3–12–145 related to becoming a participating unit, notice, discontinuing offer of portable retirement option.

Section 3–12–146 related to choosing to become electing member, effect.

Section 3–12–147 related to eligibility of electing member for disability allowance, additional contribution required.

Section 3–12–148 related to eligibility of electing member for family benefit, additional contribution required.

Section 3–12–149 related to participation of electing member in additional survivor protection.

Section 3–12–150 related to amount of withdrawal by electing member upon termination of employment.

Section 3–12–151 related to redeposit of withdrawn contributions upon reemployment of electing member, terms and conditions.

Section 3–12–152 related to recapture or purchase of electing member's prior credited service not considered employer contribution.

**3–12–153. Mitchell firefighters as members of system**

On July 1, 1996, all members of the City of Mitchell firemen's pension plan as of June 30, 1996, including all retirees, vested inactive members, and benefit recipients, shall become members of the system. Each member shall receive credited service under the system for all service earned under the City of Mitchell firemen's pension plan.

**Source:** SL 1996, ch 28, § 1.

**Library References**

Municipal Corporations ⌘200(2).  
 Westlaw Topic No. 268.  
 C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733,

740 to 744, 752 to 753, 756, 763 to 764.

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### 3-12-154. Benefits for Mitchell firefighters—Improvement factor

Each retired member or benefit recipient described in § 3-12-153 shall receive the same benefit under the form of annuity provided by the City of Mitchell firemen's pension plan as in effect on June 30, 1996, except for the improvement factor. Each benefit shall be improved on July 1, 2008, and thereafter by the system's improvement factor. The benefits of members described in § 3-12-153 who are entitled to receive benefits from the city of Mitchell firemen's pension plan as of July 1, 1996, shall be paid from the fund established by this chapter.

**Source:** SL 1996, ch 28, § 2; SL 2008, ch 26, § 1; SL 2010, ch 20, § 14.

<b>Library References</b>	740, 742 to 744, 752 to 754, 756, 763 to 764.
Municipal Corporations <del>§</del> 200(7). Westlaw Topic No. 268.	
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733,	

### 3-12-155. Retirement of Mitchell firefighters

Upon retirement, each member described in § 3-12-153 who is a vested inactive member on July 1, 1996, or an active firefighter in the employ of the city of Mitchell on July 1, 1996, shall receive the greater of:

- (1) The member's retirement allowance calculated under this chapter; or
- (2) The member's retirement allowance calculated under the city of Mitchell firemen's pension plan based on credited service up to June 30, 1996 and compensation up to June 30, 1996, and utilizing the plan's benefit terms and benefit formula, but applying the system's improvement factor, as specified in § 3-12-154.

In either case, the retirement allowance shall be paid from the fund established by this chapter.

**Source:** SL 1996, ch 28, § 3; SL 2008, ch 26, § 2.

<b>Library References</b>	Westlaw Topic No. 268.
Municipal Corporations <del>§</del> 200(7).	

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C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733, 740, 742 to 744, 752 to 754, 756, 763 to 764.

**3-12-156. Amount of payment to system by city of Mitchell**

The city of Mitchell shall pay to the system an amount equal to the present value of all benefits earned by the members described in § 3-12-153 up to July 1, 1996, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1996. That amount shall be calculated as of the close of business on June 30, 1996, by the system's actuary. Any amount to be paid to the system by the city of Mitchell which exceeds the value of the assets of the city of Mitchell firemen's pension plan, calculated as of the date of transfer of such assets, may be paid in periodic installments as provided in § 3-12-69.

**Source:** SL 1996, ch 28, § 4.

**Library References** 740, 742 to 744, 752 to 753, 756, 763 to 764.  
Municipal Corporations ¶200(4).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733,

**3-12-157. Transfer of city of Mitchell firemen's pension plan funds as member contributions**

All amounts transferred to the system from the city of Mitchell firemen's pension plan which under the plan were credited to the accounts of individual employees are considered member contributions under this chapter.

**Source:** SL 1996, ch 28, § 5.

**Library References** 740, 742 to 744, 752 to 753, 756, 763 to 764.  
Municipal Corporations ¶200(4).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733,

**3-12-158. Information required of city of Mitchell**

For purposes of payment of retiree benefits pursuant to § 3-12-154 and to calculate the minimum benefit pursuant to § 3-12-155, the city of Mitchell shall provide the following information:

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- (1) Each retired firefighter's benefit as of June 30, 1996, plus that benefits' annual increase;
- (2) Each active or inactive vested firefighter's accrued benefit as of June 30, 1996;
- (3) Each active firefighter's final average compensation as of June 30, 1996;
- (4) Each active firefighter's credited service as of June 30, 1996;
- (5) Each active firefighter's employee contributions, with interest credited thereon, as of June 30, 1996; and
- (6) The annual rate of salary for a first-class firefighter as of June 30, 1996.

**Source:** SL 1996, ch 28, § 6.

<b>Library References</b>	740, 742 to 744, 752 to 754, 756,
Municipal Corporations ¶200(7).	763 to 764.
Westlaw Topic No. 268.	
C.J.S. Municipal Corporations §§ 698	
to 701, 709, 711 to 712, 732 to 733,	

**3-12-159. Huron firefighters as members of system**

On July 1, 1998, all members of the city of Huron firemen pension fund as of June 30, 1998, including all retirees, any deferred vested members and any benefit recipients, shall become members of the system. Each active member shall receive credited service under the system for all service earned under the city of Huron firemen pension fund.

**Source:** SL 1998, ch 22, § 1.

<b>Library References</b>	740 to 744, 752 to 753, 756, 763 to
Municipal Corporations ¶200(2).	764.
Westlaw Topic No. 268.	
C.J.S. Municipal Corporations §§ 698	
to 701, 709, 711 to 712, 732 to 733,	

**3-12-160. Benefits for Huron firefighters—Improvement factor**

Each retired member, any benefit recipient, or any deferred vested member described in § 3-12-159 and in such status prior to July 1, 1998, shall receive the member's previously selected annuity option as provided under the city of Huron

firemen pension fund as in effect on June 30, 1998, but is not eligible for a benefit pursuant to § 3-12-94. Each such benefit in effect prior to July 1, 1998, shall be improved on that date and thereafter in accordance with § 3-12-88. The retirement benefit of a deferred vested member that goes into effect after July 1, 1998, shall be improved in accordance with § 3-12-88, but the member's final average compensation may not be increased prior to retirement by the improvement factor pursuant to § 3-12-75. The benefits of members described in § 3-12-159 who are entitled to receive benefits from the city of Huron firemen pension fund prior to July 1, 1998, shall be paid from the fund established by this chapter and funded pursuant to § 3-12-162.

**Source:** SL 1998, ch 22, § 2; SL 2004, ch 40, § 11.

<p><b>Library References</b> Municipal Corporations ¶200(7). Westlaw Topic No. 268. C.J.S. Municipal Corporations §§ 698 to 701, 709, 711 to 712, 732 to 733,</p>	<p>740, 742 to 744, 752 to 754, 756, 763 to 764.</p>
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### **3-12-161. Retirement of Huron firefighters**

Upon retirement, each member described in § 3-12-159 who is an active firefighter in the employ of the city of Huron on July 1, 1998, shall receive the greater of:

- (1) The member's retirement allowance calculated under this chapter; or
- (2) The member's retirement allowance calculated under the city of Huron firemen pension fund based on credited service up to June 30, 1998, and compensation up to June 30, 1998, and utilizing the fund's benefit terms and benefit formula.

In either case, such retirement benefit shall be improved in accordance with the provisions of § 3-12-88, shall be paid from the fund established by this chapter and shall be funded pursuant to § 3-12-162 and § 3-12-71. Any allowance granted pursuant to subdivision (2) may not include a benefit pursuant to § 3-12-94.

**Source:** SL 1998, ch 22, § 3.

## § 3-12-161

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### Library References

Municipal Corporations Ⓒ200(7).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740, 742 to 744, 752 to 754, 756,  
763 to 764.

### 3-12-162. Amount of payment to system by City of Huron

The city of Huron shall pay to the system an amount equal to the present value of all benefits earned by the members described in § 3-12-159 up to July 1, 1998, multiplied by the funding ratio set forth in the valuation of the actuarial requirements and financial condition of the system as of June 30, 1998. That amount shall be calculated as of the close of business on June 30, 1998, by the system's actuary. Any amount to be paid to the system by the city of Huron which exceeds the value of the assets of the city of Huron firemen pension fund, calculated as of the date of transfer of such assets, may be paid in periodic installments as provided in § 3-12-69.

**Source:** SL 1998, ch 22, § 4.

### Library References

Municipal Corporations Ⓒ200(7).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740, 742 to 744, 752 to 754, 756,  
763 to 764.

### 3-12-163. Transfer of city of Huron firemen's pension plan funds as member contributions

All amounts transferred to the system from the city of Huron firemen pension fund which under the fund were credited to the accounts of individual members are considered member contributions under this chapter.

**Source:** SL 1998, ch 22, § 5.

### Library References

Municipal Corporations Ⓒ200(4).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 698  
to 701, 709, 711 to 712, 732 to 733,

740, 742 to 744, 752 to 753, 756,  
763 to 764.

### 3-12-164. Information required of city of Huron

For purposes of payment of retirement or other benefits pursuant to § 3-12-160 and to calculate the minimum benefit

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pursuant to § 3-12-161, the city of Huron shall provide the following information:

- (1) Each retired firefighter's benefit and form of payment as of June 30, 1998;
- (2) Each active or deferred vested firefighter's accrued benefit as of June 30, 1998;
- (3) Each active firefighter's final average compensation as of June 30, 1998.
- (4) Each active firefighter's credited service as of June 30, 1998;
- (5) Each active firefighter's employee contributions, with interest credited thereon as of June 30, 1998; and
- (6) The annual rate of salary for a first-class firefighter as of June 30, 1998.

**Source:** SL 1998, ch 22, § 6.

<b>Library References</b>	740, 742 to 744, 752 to 754, 756,
Municipal Corporations § 200(7).	763 to 764.
Westlaw Topic No. 268.	
C.J.S. Municipal Corporations §§ 698	
to 701, 709, 711 to 712, 732 to 733,	

**3-12-165 to 3-12-188. Transferred to §§ 3-13A-1 to 3-13A-25 by SL 2005, ch 28, § 1**

**3-12-189. Supplemental pension benefit created**

There is hereby established the South Dakota Retirement System supplemental pension benefit. The supplemental pension benefit shall be within and integral to the South Dakota Retirement System. It is the intent of the Legislature that the provisions related to the supplemental pension benefit shall be qualified under § 401(a) of the Internal Revenue Code and that the provisions constitute one aspect of a governmental plan as identified under § 414(d) of that code.

**Source:** SL 2008, ch 24, § 1; SL 2013, ch 20, § 13.

<b>Administrative Code References</b>	Supplemental pension benefit, see
Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:01:09:08.	S.D. Admin. R. 62:01:09:01 et seq.

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<b>Library References</b>	C.J.S. Officers and Public Employees
Officers and Public Employees	§§ 374 to 376, 421 to 430, 433 to 436.
⇒101.5(1).	
Westlaw Topic No. 283.	

#### **3-12-190. Interest rate assumption—Suspension of new supplemental pension contracts—No right to particular price**

On an annual basis, at minimum, the board shall establish an interest rate assumption upon which the provisions of subsequent supplemental pension contracts shall be based. The board shall establish the assumption on the basis of the recommendations of the system's actuary and the state investment officer. The interest rate assumption may not be greater than the actuarial assumed rate of return for the fund, nor may the interest rate assumption be less than the effective rate of interest described in subdivision 3-12-47(27). Any other provision of law notwithstanding, the board may suspend issuance of new supplemental pension contracts at any time. Any suspension of new supplemental pension contracts shall be prospective in operation and may not affect supplemental pension contracts already in effect.

The structure of supplemental pension benefit administration requires that supplemental pension benefit purchase costs vary from one time period to the next. Consequently, participants who accept the option of a supplemental pension benefit have no expectation or fundamental right to any particular supplemental pension benefit purchase price.

**Source:** SL 2008, ch 24, § 3.

<b>Administrative Code References</b>	Westlaw Topic No. 283.
Supplemental pension benefit, basis for monthly benefit, see S.D. Admin. R. 62:01:09:07.	C.J.S. Officers and Public Employees
	§§ 374 to 376, 421 to 430, 433 to 436.

<b>Library References</b>
Officers and Public Employees
⇒101.5(1).

#### **3-12-191. Rollover of funds—Single premium—Contract effective upon signing—Payment of benefits**

A retiree receiving a benefit from the system may become a supplemental pension participant by direct rollover of funds

held by the member in either or both of the plans created in chapters 3–13 and 3–13A into the fund. Any rollover shall be in compliance with the provisions of § 401(a)(31) of the Internal Revenue Code and shall be recorded in the participant's supplemental pension contract record. All of a participant's funds rolled into the fund shall be expended in full as the single premium for a supplemental pension contract. No single premium may be less than ten thousand dollars. No participant may have more than one supplemental pension contract. A supplemental pension contract goes into effect when a participant signs the supplemental pension contract. The initial monthly supplemental pension benefit is payable the first day of the first month after the contract goes into effect. Payment of any prior and current supplemental pension benefits shall be made within two months after the contract is in effect.

**Source:** SL 2008, ch 24, § 4; SL 2013, ch 20, § 14.

**Administrative Code References**

Supplemental pension benefit,  
Participant's status as a retiree, see  
S.D. Admin. R. 62:01:09:06.  
System may pay a single monthly  
benefit, see S.D. Admin. R.  
62:01:09:02.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

**Library References**

Officers and Public Employees  
⇒101.5(1).

**3–12–192. Type of supplemental pension benefits based on marital status**

A supplemental pension participant shall receive one of two types of supplemental pension benefits:

- (1) A supplemental pension benefit payable monthly for the lifetime of the participant; or
- (2) A supplemental pension benefit payable monthly for the lifetime of the participant and, upon the death of the participant, a supplemental pension benefit payable monthly to the participant's supplemental pension spouse equal to sixty percent of the monthly benefit amount that the participant was receiving at the time of death.

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A participant who is not married at the time of the supplemental pension benefit purchase may contract only for a supplemental pension benefit as described in subdivision (1) and a participant who is married at the time of the supplemental pension benefit purchase may contract only for a supplemental pension benefit as described in subdivision (2).

**Source:** SL 2008, ch 24, § 5.

### Administrative Code References

Supplemental pension benefit,  
Basis for monthly benefit, see S.D.  
Admin. R. 62:01:09:07.  
Increase in supplemental pension  
spouse's benefit, see S.D. Admin.  
R. 62:01:09:04.  
Proof of participant's marital sta-  
tus, see S.D. Admin. R.  
62:01:09:03.

### Library References

Officers and Public Employees  
⊞101.5(1).  
Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

## 3–12–193. Annual increase in supplemental pension benefits

A supplemental pension participant shall receive an annual increase in the amount of the participant's supplemental pension benefit for each year commencing on the July first following the date on which the benefit was first payable, and equal to the improvement factor established in subdivision 3–12–47(41). If a supplemental pension contract goes into effect prior to July 1, 2010, and if the first annual increase is for a period of less than twelve months, the initial increase shall be prorated as described in that subdivision. If a supplemental pension contract goes into effect on or after July 1, 2010, there shall be no initial prorated annual increase for a period of less than twelve months.

**Source:** SL 2008, ch 24, § 6; SL 2010, ch 20, § 15.

### Administrative Code References

Increase in supplemental pension  
spouse's benefit, see S.D. Admin. R.  
62:01:09:04.

Westlaw Topic No. 283.  
C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 430, 433 to  
436.

### Library References

Officers and Public Employees  
⊞101.5(1).

**3–12–194. Death of participant or spouse—Lump sum distribution to beneficiaries—Time for making claim**

If payment of monthly supplemental pension benefits ceases due to the death of the participant or the death of a supplemental pension spouse, and the total of monthly supplemental pension benefits paid is less than the amount of the participant's single premium, the difference between the total benefits paid and the single premium shall be disbursed in a lump sum as provided in this section. Amounts payable under this section shall be disbursed as follows:

- (1) To the beneficiary or entity designated by the participant in the participant's supplemental pension contract record, if any is designated;
- (2) If no beneficiary or entity is designated, then to all surviving children of the participant, irrespective of age, on a share-alike basis; or
- (3) If no beneficiary or entity is designated and there are no surviving children, then to the participant's estate.

If no claim for payment due upon the death of a deceased participant is made within three years from date of death, the payment shall revert to the system. However, a claim may be honored after the expiration of the three-year reversion period if, in the opinion of the administrator, payment of the claim is warranted by exceptional circumstances.

The provisions of this section are not affected by the provisions of § 3–12–110 or 3–12–116.

**Source:** SL 2008, ch 24, § 7.

**Administrative Code References**

Supplemental pension benefit, no increase in value of single premium, see S.D. Admin. R. 62:01:09:05.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).

## § 3-12-195

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### **3-12-195. Contract purchases and benefit payments deemed qualified plan distributed annuity contracts**

Supplemental pension contract purchases and supplemental pension benefit payments administered pursuant to the provisions of §§ 3-12-189 to 3-12-198, inclusive, are considered to be qualified plan distributed annuity contracts under Internal Revenue Service Treasury Regulation 1.402(c)-2, as amended through January 1, 2008.

**Source:** SL 2008, ch 24, § 8.

#### **Administrative Code References**

Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:01:09:08.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

#### **Library References**

Officers and Public Employees  
⇒101.5(1).

### **3-12-196. Minimum distribution rules and annual benefit limitations**

Supplemental pension benefit payments shall follow the minimum distribution rules of § 401(a)(9) of the Internal Revenue Code and the annual benefit limitations of § 415(b)(1)(A) of that code.

**Source:** SL 2008, ch 24, § 9; SL 2013, ch 20, § 15.

#### **Administrative Code References**

Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:01:09:08.

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

#### **Library References**

Officers and Public Employees  
⇒101.5(1).

### **3-12-197. Applicability of certain retirement system provisions**

Supplemental pension benefits are not subject to the duplicate benefit provisions of § 3-12-109, to the participant reemployment restrictions of § 3-12-82, 3-12-88, 3-12-111, 3-12-111.1, 3-12-199 or 3-12-200, nor to the benefit adjustment provisions of § 3-12-106 or 3-12-107. Supplemental

pension benefits are optional benefits granted the protections of the provisions of § 3–12–115.

**Source:** SL 2008, ch 24, § 10; SL 2010, ch 23, § 9, eff. Apr. 1, 2010.

**Historical and Statutory Notes**

SL 2010, ch 23, § 10 provided that “Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010.”

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).

**3–12–198. Exemption from Title 58 and from securities and agent registration**

While performing their official duties under the provisions of §§ 3–12–189 to 3–12–198, inclusive, the board, the employees of the system, the system’s actuary, the State Investment Council, and the employees of the State Investment Council are exempt from the provisions of Title 58 and any associated provisions of state law. Supplemental pension benefits and supplemental pension contracts are exempt from the provisions of Title 58.

To the extent that supplemental pension contracts may be deemed to be securities, they are exempt from securities registration pursuant to subdivision 47–31B–201(1). While performing their official duties under the provisions of §§ 3–12–189 to 3–12–198, inclusive, the board, the employees of the system, the system’s actuary, the State Investment Council, and the employees of the State Investment Council are exempt from agent registration provisions pursuant to subdivision 47–31B–402(b)(3).

**Source:** SL 2008, ch 24, § 11.

**Library References**

Officers and Public Employees  
 ⇨101.5(1).  
 Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 374 to 376, 421 to 430, 433 to 436.

## § 3-12-199

## PUBLIC OFFICERS AND EMPLOYEES

### **3-12-199. Invalid retirement—Repayment of retirement annuity payments**

If, on or after April 1, 2010, a retired member reenters covered employment within the three consecutive calendar months that start with the member's effective date of retirement, the member's retirement is deemed invalid. If the member received one or more retirement annuity payments during the invalid retirement, the member shall either repay the payments as a lump sum immediately or the repayments shall be by contractual payments over a period of up to three years, which payments shall include interest at the assumed rate of return, or the repayments shall be by an actuarial reduction in eventual monthly benefits based on the mortality table and scale used to determine an actuarial equivalent, as defined in subdivision 3-12-47(3).

**Source:** SL 2010, ch 23, § 1, eff. Apr. 1, 2010.

#### **Historical and Statutory Notes**

SL 2010, ch 23, § 10 provided that "Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010."

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 374 to 376, 421 to 422, 431 to 432.

#### **Library References**

Officers and Public Employees  
⇒101.5(2).

### **3-12-200. Retired member who reenters covered employment on or after April 1, 2010—Benefits and membership**

If, on or after April 1, 2010, a retired member reenters covered employment at some time after the three consecutive calendar months that start with the member's effective date of retirement, the member's retirement benefits and continued membership shall be administered pursuant to this section.

If the retired member's benefits have not been reduced pursuant to § 3-12-106, the member's monthly retirement annuity shall be reduced by fifteen percent and the annual increase shall be eliminated throughout the period that the member reenters covered employment in accord with § 3-12-88. The reduction and elimination shall cease if the member again

terminates covered employment. However, the foregoing provisions notwithstanding, the reduction and elimination do not apply if the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently reenters covered employment as a Class A member.

If the retired member's benefits have been reduced pursuant to § 3–12–106, the member's benefits shall be suspended during the period that the member reenters covered employment and the annual increase shall be eliminated during the period that the member reenters covered employment, both in accord with § 3–12–111.1. The suspension and elimination shall cease if the member again terminates covered employment.

Whether the member's retirement benefits are unreduced or have been reduced, contributions required of the member pursuant to § 3–12–71 shall be deposited by the member's participating unit with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3–13. The contributions shall be governed by § 457 of the Internal Revenue Code. The foregoing notwithstanding, the contributions required of the member's employer unit pursuant to § 3–12–71 shall be deposited into the member trust fund created by this chapter, but without any association with or credit to the member. The member may not earn any additional benefits associated with the period that the member reenters covered employment.

**Source:** SL 2010, ch 23, § 2, eff. Apr. 1, 2010; SL 2013, ch 20, § 16.

**Historical and Statutory Notes**

SL 2010, ch 23, § 10 provided that "Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1, 2010."

Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 374 to 376, 421 to 430, 433 to 436.

**Library References**

Officers and Public Employees  
 ⌘101.5(1).

## **§ 3–12–201**

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### **3–12–201. Disability benefits eligibility—Applications after June 30, 2015**

A contributing member who becomes disabled and who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3–12–47(24) since the member's most recent entry into active status and prior to becoming disabled, or was disabled by accidental means while performing usual duties for an employer, is eligible for disability benefits if the disability is expected to be of long, continued, and indefinite duration of at least one year and the member is disabled on the date the member's contributory service ends. For purposes of this section, a transfer within a participating unit, or a change in employment from one participating unit to another participating unit if there is no break in contributory service, does not constitute a new entry into active status. The provisions of this section apply to any member whose application for disability benefits is received by the system after June 30, 2015.

**Source:** SL 2014, ch 20, § 1.

### **3–12–202. Application for disability benefits—Required information—Filing deadline**

Any member seeking disability benefits pursuant to § 3–12–201 shall submit an application to the administrator. Any information required for a complete application must be received within one year after the application for disability benefits was received. If the required information is not received by the system within one year after the application is received, the member may reapply.

Any member, who fails to file an application for disability benefits with the administrator within three years after the date on which the member's contributory service ends, forfeits all rights to disability benefits.

**Source:** SL 2014, ch 20, § 2.

**3–12–203. Employer certification of inability to provide accommodations or comparable employment**

No application for disability benefits pursuant to § 3–12–201 may be determined until the member's employer has certified to the system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide to the member either effective accommodations in the member's current position or employment in a comparable level position.

**Source:** SL 2014, ch 20, § 3.

**3–12–204. Health care provider certification of disability**

No application for disability benefits pursuant to § 3–12–201 may be determined until a health care provider has certified to the system that the employee has a disability.

**Source:** SL 2014, ch 20, § 4.

**3–12–205. Advice of disability advisory committee—Independent examination or assessment—Notice of disapproval of application**

Upon receipt of an application for disability benefits after June 30, 2015, along with statements from a health care provider and the member's employer, the administrator shall determine whether the member is eligible for disability benefits. The administrator may request the advice of the disability advisory committee with respect to any application. The recommendation of the disability advisory committee is not binding on the administrator. The disability advisory committee or the administrator may require an independent medical examination of the member to be conducted by a disinterested health care provider selected by the disability advisory committee or the administrator to evaluate the member's condition. The disability advisory committee or the administrator may require a functional capacity assessment of the member to be conducted by a licensed professional qualified to administer such assessments, and the assessment may be used to evaluate the member's qualification for benefits. Refusal to undergo an

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examination or assessment pursuant to this section is cause for denying the application.

If the administrator determines that the member is not disabled, a notice of the administrator's determination and the reasons for the determination shall be sent, certified mail, to the member's last known address.

**Source:** SL 2014, ch 20, § 5.

**3-12-206. Notice of approval of disability benefits—Commencement of benefits**

If the administrator determines that the member whose application was received pursuant to § 3-12-205, meets the qualifications to receive disability benefits, a notice of the administrator's determination shall be sent, certified mail, to the member's last known address. A member whose application for disability benefits is approved shall receive the benefits beginning with the month following the date on which the member's contributory service terminates. If any member fails to terminate contributory service within one year after receiving notice that the member's application has been approved, the member's application approval expires.

**Source:** SL 2014, ch 20, § 6.

**3-12-207. Calculation of disability benefits—Surviving spouse benefit**

The disability benefit approved pursuant to § 3-12-206 is the greater of the following calculations:

- (1) Twenty-five percent of the member's final average compensation at the date of disability; or
- (2) The member's unreduced accrued retirement benefit at the date of disability.

The disability benefit shall be paid in monthly installments for the life of the member unless the benefit terminates pursuant to § 3-12-210.

For purposes of determining the eligibility of a surviving spouse benefit, the disability benefit is considered a retirement benefit when the member attains the age of sixty-five.

Source: SL 2014, ch 20, § 7; SL 2015, ch 26, § 2.

**3–12–208. No credited service for disability benefit period**

No member may receive credited service for the period during which the member receives disability benefits pursuant to § 3–12–207.

Source: SL 2014, ch 20, § 8.

**3–12–209. Contributions for period of employment while receiving disability benefits**

If a member receiving disability benefits pursuant to § 3–12–207 becomes employed by a participating unit, the member and employer shall make active contributions pursuant to § 3–12–71 during the period of the employment. The contributions required of the member pursuant to § 3–12–71 shall be deposited by the member's employer with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3–13. The contributions shall be governed by § 457 of the Internal Revenue Code. Notwithstanding the provisions of § 3–12–71, the contributions required of the member's employer pursuant to § 3–12–71 shall be deposited into the member trust fund created by chapter 3–12, but without any association with or credit to the member.

Source: SL 2014, ch 20, § 9.

**3–12–210. Termination of disability benefits**

A member's disability benefits pursuant to § 3–12–207 terminate if the member is no longer disabled, as certified by a health care provider. Upon receipt of certification the administrator shall determine whether the member meets the qualifications for disability benefits. In making this determination the administrator shall follow the same procedure used in making the initial determination of disability provided in § 3–12–205. A member's disability benefits shall be suspended and subject to termination if the member refuses to undergo an examination or assessment requested by the disability advisory committee or the administrator. If the administrator finds that the

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member no longer meets the qualifications for disability benefits, the administrator shall notify the member of this finding by certified mail and the payment of disability benefits shall terminate thirty days after receipt of the notice. Such a finding by the administrator is subject to appeal and review as a contested case.

**Source:** SL 2014, ch 20, § 10.

### **3-12-211. Contributions upon return to covered employment**

If a member's disability benefits pursuant to § 3-12-207 have terminated and the member returns to covered employment, the member and employer shall make contributions pursuant to § 3-12-71.

**Source:** SL 2014, ch 20, § 11.

### **3-12-212. Retirement benefit of member who received disability benefits and returned to covered employment**

Upon retirement, a member who received disability benefits pursuant to § 3-12-207 and whose benefits were terminated and who returned to covered employment shall receive a retirement benefit based on the member's credited service prior to receiving disability benefits and after receiving disability benefits. The final average compensation used in the calculation of the retirement benefit is the greater of:

- (1) The member's final average compensation at the date of retirement; or
- (2) The member's final average compensation at the date of disability, increased by the improvement factor from the date of the termination of disability benefits to the date of retirement.

**Source:** SL 2014, ch 20, § 12.

### **3-12-213. Retirement benefit of member whose disability benefits were terminated but who did not return to covered employment**

Upon retirement, a member who received disability benefits pursuant to § 3-12-207 and whose benefits were terminated

and who did not return to covered employment shall receive a retirement benefit based on the member's credited service prior to receiving disability benefits. The final average compensation used in the calculation of the retirement benefit shall be the final average compensation at the date of disability, increased by the improvement factor from the date of the termination of disability benefits to the date of retirement.

**Source:** SL 2014, ch 20, § 13.

**3–12–214. Family benefit where member dies before normal retirement age while receiving disability benefits**

Upon the death of a member receiving disability benefits pursuant to § 3–12–207, who dies prior to normal retirement age, a family benefit shall be paid on behalf of any child of the member. The monthly amount of the family benefit is the amount of the monthly disability benefits the member received prior to death. The monthly family benefit shall be equally apportioned among any children of the member and shall be paid on behalf of any child to the conservator or custodian of the child, as applicable. However, if the child is eighteen years of age the benefit is payable directly to the child. As any child becomes ineligible pursuant to subdivision 3–12–47(14), the family benefit shall be reallocated among any remaining children of the deceased member. The family benefit terminates if there are no children of the deceased member pursuant to subdivision 3–12–47(14).

**Source:** SL 2014, ch 20, § 14.

**3–12–215. Surviving spouse benefit at age sixty-five where member received disability benefits**

If no family benefit is being paid pursuant to § 3–12–214, a surviving spouse of a member who received disability benefits pursuant to § 3–12–207 shall, upon attaining the age of sixty-five, receive a monthly benefit, payable for the life of the surviving spouse, equal to one of the following calculations, whichever is applicable:

- (1) If there was a family benefit paid, sixty percent of the family benefit paid at the time the family benefit ended,

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increased by the improvement factor from the date the last family benefit was paid; or

- (2) If there was no family benefit paid, sixty percent of the deceased member's disability benefit paid at the time of the member's death, increased by the improvement factor from the date of the member's death.

**Source:** SL 2014, ch 20, § 15.

**3–12–216. Surviving spouse benefit where member dies after normal retirement age while receiving disability benefits**

If a member dies after normal retirement age while receiving benefits pursuant to § 3–12–207, and no other benefits are being paid on behalf of the member, the member's surviving spouse shall receive a surviving spouse benefit, payable in monthly installments, equal to sixty percent of the monthly disability benefit that the member received prior to death.

**Source:** SL 2014, ch 20, § 16.

**3–12–217. Transfer of funds in cement plan retirement fund**

Upon receipt of the appropriation pursuant to SL 2014, ch 21, § 1, the state treasurer shall transfer the balance of the funds of the cement plant retirement fund to the South Dakota Retirement System trust fund.

**Source:** SL 2014, ch 21, § 2, eff. Apr. 1, 2014.

<p><b>Historical and Statutory Notes</b> SL 2014, ch 21, § 13 provided that "Whereas, this Act is necessary for the support of the state government and its</p>	<p>existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014."</p>
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**3–12–218. Members of cement plant retirement plan to be Class C members of system**

On April 1, 2014, all members of the cement plant retirement plan, including any retiree and any vested member, become Class C members of the system. The administration of retirement benefits for Class C members shall continue with the system.

**Source:** SL 2014, ch 21, § 3, eff. Apr. 1, 2014.

**Historical and Statutory Notes**

SL 2014, ch 21, § 13 provided that "Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014."

**Administrative Code References**

Cement plant employee retirement plans, see S.D. Admin. R. 20:16:15:01 et seq.

**3–12–219. Class C members to receive benefits as provided under cement plant retirement plan**

Each Class C member shall receive the same benefit as provided pursuant to the member's respective cement plant retirement plan as in effect on June 30, 2013. The benefits of any Class C member and the member's beneficiaries shall be paid from the fund established by this chapter and funded pursuant to SL 2014, ch 21, § 1 and § 3–12–217.

**Source:** SL 2014, ch 21, § 4, eff. Apr. 1, 2014.

**Historical and Statutory Notes**

SL 2014, ch 21, § 13 provided that "Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014."

**Administrative Code References**

Cement plant employee retirement plans, see S.D. Admin. R., see S.D. Admin. R. 20:16:15:01 et seq.

**3–12–220. Funds transferred from cement plant retirement fund considered member contributions**

Any amount transferred to the system from the cement plant retirement fund pursuant to § 3–12–217, which under the cement plant retirement plan were credited to the accounts of individual members, are considered member contributions.

**Source:** SL 2014, ch 21, § 5, eff. Apr. 1, 2014.

**Historical and Statutory Notes**

SL 2014, ch 21, § 13 provided that "Whereas, this Act is necessary for the support of the state government and its

existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014."

**3–12–221. Payment of benefits and operational expenses related to Class C members**

Notwithstanding the provisions of § 3–12–61, any benefit payments and any operational expenses related to Class C

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members shall be paid from the fund established by this chapter.

**Source:** SL 2014, ch 21, § 6, eff. Apr. 1, 2014.

<p><b>Historical and Statutory Notes</b> SL 2014, ch 21, § 13 provided that "Whereas, this Act is necessary for the support of the state government and its</p>	<p>existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014."</p>
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**3-12-222. Promulgation of rules to administer retirement benefits for Class C members**

The board may, pursuant to chapter 1-26, adopt rules to establish uniform procedures for the administration of the retirement benefits of Class C members.

**Source:** SL 2014, ch 21, § 7, eff. Apr. 1, 2014.

<p><b>Historical and Statutory Notes</b> SL 2014, ch 21, § 13 provided that "Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect on April 1, 2014."</p>	<p><b>Administrative Code References</b> Cement plant employee retirement plans, see S.D. Admin. R. 20:16:15:01 et seq.</p>
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**3-12-223. Member election to receive lump sum trustee-to-trustee payment in lieu of monthly payments**

Any vested member of the state cement plant retirement plan may elect to receive a lump sum trustee-to-trustee payment in lieu of monthly retirement benefit payments. The amount of the lump sum trustee-to-trustee payment shall be determined by the system's actuary based on the actuarial equivalent of the member's benefit as defined by the cement plant retirement plan. However, no lump sum trustee-to-trustee payment may be made unless both of the following requirements are satisfied:

- (1) The member has not received any monthly benefits; and
- (2) The member directs a trustee-to-trustee transfer of the lump sum payment to a receiving retirement custodian, trustee, or other approved recipient.

Any eligible member who desires to make the election authorized by this section shall submit an application to the system.

Source: SL 2014, ch 22, § 1.

**3-12-224. Surviving spouse election to receive lump sum trustee-to-trustee payment in lieu of monthly payments**

Upon the death of a vested member of the state cement plant retirement plan who died prior to starting a monthly retirement benefit, the member's surviving spouse may elect a lump sum trustee-to-trustee payment in lieu of monthly surviving spouse benefit payments. The amount of the lump sum trustee-to-trustee payment shall be determined by the system's actuary based on the actuarial equivalent, as defined by the cement plant retirement plan, of the spouse's age sixty-five survivor benefit. However, no lump sum trustee-to-trustee payment may be made unless the following requirements are satisfied:

- (1) Neither the member nor the member's family nor the member's spouse received any monthly benefits from the plan; and
- (2) The surviving spouse directs a trustee-to-trustee transfer of the lump sum payment to a receiving retirement custodian, trustee, or other approved recipient.

Any eligible surviving spouse who desires to make the election authorized by this section shall submit an application to the system.

Source: SL 2014, ch 22, § 2.

**CHAPTER 3-13**  
**DEFERRED COMPENSATION PLAN**  
**FOR PUBLIC EMPLOYEES**

Section

- 3-13-1 to 3-13-38. Repealed.
- 3-13-39 to 3-13-48. Repealed.
- 3-13-49. State deferred compensation plan—Agreements in writing—Administrative charge—Amounts deferred remitted to state deferred compensation fund.
- 3-13-49.1. Political subdivisions.
- 3-13-50. Administration of plan—Hiring and remuneration of additional employees.
- 3-13-51. Repealed.
- 3-13-51.1. Participants may invest funds in investments approved by state investment officer—Investment alternatives to be offered—Investment officer as fiduciary.
- 3-13-51.2. Administrator and investment officer authorized to execute necessary contracts—Transfer of contracts in effect on July 1, 2000.
- 3-13-51.3. Default designation of new investment selection upon termination of participant's contract.
- 3-13-52. Liability of plan or employer—Liability of board member or administrator for action taken in bad faith.
- 3-13-53. State deferred compensation fund—Deposit of deferred compensation—Payment of expenditures from fund—Administrative expenses.
- 3-13-54. Promulgation of rules—Limitation on availability of accumulated deferred compensation to participant—Exception.
- 3-13-55. Definition of terms.
- 3-13-56. Automatic enrollment feature.
- 3-13-57. Designated Roth contribution program.

**Administrative Code References**

State retirement system, deferred compensation plan, see S.D. Admin. R. 62:03:01:01 et seq.

**3-13-1 to 3-13-38. Repealed by SL 1974, ch 35, § 80**

**Historical and Statutory Notes**

Section 3-13-1 related to definition of terms.

Section 3-13-2 established a retirement system covering officers and agents.

Section 3-13-3 related to effective dates of coverage.

Section 3-13-4 related to establishment of retirement board, composition.

Section 3-13-4.1 related to direction and supervision by Bureau of Person-

nel, independent functions retained by board.

Section 3-13-5 related to terms of elective members of board, vacancies, oath of members.

Section 3-13-6 related to annual election of board members.

Section 3-13-7 related to organization and meetings of Retirement Board.

Section 3-13-8 related to legal adviser of board.

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## §§ 3-13-39 to 3-13-48

### Repealed

Section 3-13-9 related to administrative expense, reimbursement of expenses of board members.

Section 3-13-10 related to rules and regulations, determination of eligibility for coverage.

Section 3-13-11 related to actuarial data and investigations.

Section 3-13-12 required membership in the retirement system.

Section 3-13-13 related to members' contributions, salary deductions.

Section 3-13-14 related to commencement of members' contributions, prior service credit for persons re-entering service.

Section 3-13-15 related to contributions for period of military absence, military service credit.

Section 3-13-16 related to state contributions to retirement fund.

Section 3-13-17 related to time of transfer of monthly state contributions.

Section 3-13-18 related to contributions credited to retirement fund, investment of surplus.

Section 3-13-19 related to notice to auditor of personnel changes.

Section 3-13-20 related to designation of beneficiaries by contributors.

Section 3-13-21 related to prior service credit, certification conclusive against board, periods of absence without pay.

Section 3-13-22 related to retirement on service retirement allowance.

Section 3-13-23 related to amount of service retirement allowance.

Section 3-13-24 related to optional retirement with reduced allowance.

Section 3-13-25 related to disability retirement, amount of allowance, disability resulting from service.

Section 3-13-26 related to involuntary discontinuance of service before retirement age, election of refund or annuity.

Section 3-13-27 related to compulsory retirement, annuity or refund.

Section 3-13-28 related to death before receiving value of annuities, payments to beneficiary.

Section 3-13-29 related to optional allowances for beneficiaries with reduced allowance for member.

Section 3-13-30 related to beneficiary's allowance following death in course of employment.

Section 3-13-31 related to refund of contributions on voluntary resignation or discharge for cause, state contributions remain in fund.

Section 3-13-32 related to refusal or suspension of state annuity where death or injury caused by fault of member.

Section 3-13-33 related to revocation or suspension of annuity to beneficiary convicted of felony.

Section 3-13-34 related to correction of errors and adjustment of payments.

Section 3-13-35 related to monthly payment of allowance, restrictions on changes in amount.

Section 3-13-36 related to annuities and refunds exempt from tax, process or assignment.

Section 3-13-37 related to subrogation of state to rights against third persons, excess recovery paid to contributor or beneficiary.

Section 3-13-38 related to false and fraudulent statements and records, penalty.

## 3-13-39 to 3-13-48. Repealed by SL 1987, ch 38, §§ 8 to 17

### Historical and Statutory Notes

Section 3-13-39 authorized deferred compensation, investment of deferred amount.

Section 3-13-40 related to establishment of deferred compensation trust, approval and administrative duties, board of trustees as trust.

Section 3-13-41 related to state employees' plan, administration by labor

department, participation agreements, retirement system contributions unaffected.

Section 3-13-42 related to investment of state employees' deferred amounts.

Section 3-13-43 related to subdivision employees' plan, participation agreements.

**§§ 3-13-39 to 3-13-48 PUBLIC OFFICERS AND EMPLOYEES  
Repealed**

Section 3-13-44 related to contract for subdivision plan with labor department.

Section 3-13-45 related to investment of subdivision funds.

Section 3-13-46 prohibited investment offers by unlicensed persons.

Section 3-13-47 related to limitation of financial liability of employers.

Section 3-13-48 related to other local plans that were not prohibited.

**3-13-49. State deferred compensation plan—Agreements in writing—Administrative charge—Amounts deferred remitted to state deferred compensation fund**

The board may establish the South Dakota deferred compensation plan for state government and political subdivision governments as determined by the board. Any eligible person wishing to participate shall execute such agreements as the board may require and shall specify in writing the amount of compensation to be deferred. Such agreement shall authorize reduction of compensation by the amount specified plus an administrative charge set by the board. The employer of each participating employee shall remit all amounts so deferred to the South Dakota deferred compensation fund, along with such documentation as may be required, no later than ten days after each payday. No deferral of compensation under this chapter may reduce compensation for the purpose of calculation of contributions and benefits under chapters 3-12 and 3-12A.

**Source:** SL 1987, ch 38, § 1.

**Commission Note**

Chapter 3-12A referred to in this section was repealed by SL 2012, ch 23, § 10. See chapter 3-6E.

Participation in deferred compensation plan, see S.D. Admin. R. 62:03:02:01 et seq.

Severance from employment, see S.D. Admin. R. 62:03:05:03.

**Administrative Code References**

Conditions for distribution, see S.D. Admin. R. 62:03:05:01.

Minimum deferral, see S.D. Admin. R. 62:03:03:01.

**Library References**

States  64.1(4).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

**3-13-49.1. Political subdivisions**

Notwithstanding the provisions of § 3-13-49, any political subdivision may establish a deferred compensation program for its employees. Participation in such program shall be by written agreement between the employees and the governing

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body of the political subdivision. The agreement shall provide for the deferral of compensation and the investment and administration of such funds.

**Source:** SL 1989, ch 43.

### **Administrative Code References**

Employer contributions, see S.D. Admin. R. 62:03:02:05.01.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 863 to 881.

### **Library References**

Municipal Corporations Ⓒ220(9).

### **3-13-50. Administration of plan—Hiring and remuneration of additional employees**

The administrator shall administer the plan. The administrator may hire additional employees as may be required and shall set the remuneration of such employees.

**Source:** SL 1987, ch 38, § 2.

### **Administrative Code References**

Participation agreement, see S.D. Admin. R. 62:03:02:04.

Westlaw Topic No. 360.

C.J.S. States §§ 229, 250, 252.

### **Library References**

States Ⓒ53, 74.

### **3-13-51. Repealed by SL 2000, ch 27, § 1**

#### **Historical and Statutory Notes**

The repealed section related to investment of funds.

### **3-13-51.1. Participants may invest funds in investments approved by state investment officer—Investment alternatives to be offered—Investment officer as fiduciary**

Funds held by the fund may be invested by plan participants in such investments as are deemed appropriate by the state investment officer, including, but not limited to, annuity contracts. The state investment officer is authorized to enter into contracts for investment alternatives and to offer internal investment alternatives, and the plan administrator is authorized to transfer funds to, from, and among the respective investment alternatives. The state investment officer shall be held to the standard of conduct of a fiduciary and shall carry out all

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functions solely in the interests of the participants and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law.

**Source:** SL 2000, ch 27, § 2.

#### **Administrative Code References**

Assignment, see S.D. Admin. R. 62:03:06:02.

Conflict of interest, see S.D. Admin. R. 62:03:06:01.

Qualified default investment alternative, secondary alternative, liability, see S.D. Admin. R. 62:03:07:05.

#### **Library References**

States ⚖64.1(4).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

### **3–13–51.2. Administrator and investment officer authorized to execute necessary contracts—Transfer of contracts in effect on July 1, 2000**

The administrator shall execute any agreements as are necessary to carry out the provisions of this chapter, except such agreements as are executed by the state investment officer pursuant to § 3–13–51.1. Any contract for an investment alternative in effect on July 1, 2000, is hereby transferred by operation of law to the state investment officer as of July 1, 2000.

**Source:** SL 2000, ch 27, § 4.

#### **Library References**

States ⚖94.

Westlaw Topic No. 360.

### **3–13–51.3. Default designation of new investment selection upon termination of participant’s contract**

If a contract with a vendor terminates and a participant fails to notify the third-party administrator of the participant’s new investment selection before the contract terminates, the third-party administrator shall transfer that participant’s account to the investment alternative designated by the state investment officer.

**Source:** SL 2000, ch 27, § 5.

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**Library References**  
States Ⓔ64.1(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

### **3-13-52. Liability of plan or employer—Liability of board member or administrator for action taken in bad faith**

Neither the plan nor any participating employer may have any liability to any participant for losses arising out of any decrease in the value of any investments held by the plan. The liability of the plan to any participant is limited to the value of the participant's account on the date the account is made available to the participant pursuant to the provisions of the plan. In no event may any member of the board, the administrator or any member of the administrator's staff have any liability for any action taken with respect to the plan unless such action be taken in bad faith.

**Source:** SL 1987, ch 38, § 4.

**Library References**  
States Ⓔ64.1(4), 78.  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215, 231 to 232, 234.

### **3-13-53. State deferred compensation fund—Deposit of deferred compensation—Payment of expenditures from fund—Administrative expenses**

The South Dakota deferred compensation fund is hereby established. All compensation deferred pursuant to this chapter shall be deposited in such fund. Expenditures from the fund shall be paid on warrants drawn by the state auditor on vouchers approved by the administrator. All administrative expenses shall be budgeted and expended pursuant to chapters 4-7, 4-8, 4-8A, and 4-8B. In accord with § 457(g) of the Internal Revenue Code, all money in the fund and all property and rights held by the fund, at all times until made available to a participant or the participant's beneficiary, shall be held in trust for the exclusive benefit of the participant. All compensation deferred pursuant to this chapter shall be transferred not later than fifteen business days after the end of the month in which the compensation otherwise would have been paid to the participant.

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**Source:** SL 1987, ch 38, § 5; SL 1997, ch 32, § 1; SL 2008, ch 20, § 17; SL 2013, ch 20, § 17.

#### **Administrative Code References**

Operation of plan for benefit of participants, assets held in trust, see S.D. Admin. R. 62:03:06:04.

Participants' accounts and investments, see S.D. Admin. R. 62:03:04:02 et seq.

#### **Library References**

States ⚡64.1(4).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

### **3–13–54. Promulgation of rules—Limitation on availability of accumulated deferred compensation to participant—Exception**

The board may promulgate rules pursuant to chapter 1–26 concerning the time and amount of compensation which may be deferred, the persons who may participate in the plan, the conditions of participation, the time and manner in which accumulated deferrals may be made available to a participant or beneficiary, the establishment of administrative changes, and participation by political subdivisions. Except pursuant to the provisions of an automatic enrollment feature established under subdivision 3–13–56(4), in no event may the accumulated deferred compensation become available to the participant prior to thirty days following the participant's separation from employment with a participating employer unless the participant is faced with an unforeseeable emergency as determined by the board, unless an in-service distribution of a small amount of funds is made, or unless a distribution is made to a participant who has been called to perform qualified military service for a period in excess of thirty days. If a participant returns to service with a participating employer within thirty days following separation from service, the accumulated deferred compensation is not available to the participant.

**Source:** SL 1987, ch 38, § 6; SL 2009, ch 20, § 4; SL 2011, ch 20, § 4.

#### **Administrative Code References**

Deferred compensation plan, see S.D. Admin. R. 62:03:01:01 et seq.

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211 to 213, 216 to 217, 219 to 220.

#### **Library References**

States ⚡64.1(3).

**3-13-55. Definition of terms**

The definitions contained in § 3-12-47 apply to this chapter unless the context clearly otherwise requires. In addition the following terms mean:

- (1) “Accumulated deferred compensation,” compensation deferred by a participant in the plan, plus any investment return thereon;
- (2) “Plan,” the South Dakota deferred compensation plan created pursuant to this chapter; and
- (3) “Plan year,” a calendar year ending on December thirty-first.

**Source:** SL 1987, ch 38, § 7; SL 2012, ch 26, § 14.

**Administrative Code References**

Deferred compensation plan definitions, see S.D. Admin. R. 62:03:01:01.

**3-13-56. Automatic enrollment feature**

The board may establish an automatic enrollment feature within the plan by rules promulgated pursuant to chapter 1-26 and § 3-13-54. Any automatic enrollment feature established by the board shall include:

- (1) A provision that automatic enrollment shall apply only to newly-employed members hired after a specified future date;
- (2) A provision that automatic enrollment shall apply only to the employees of those participating units that choose the automatic enrollment feature for the unit’s employees;
- (3) A provision that automatic enrollment may not require more than an established maximum contribution per month per automatically-enrolled participant;
- (4) A provision that a participant who is automatically enrolled shall have as long as ninety days after the start of employment to discontinue participation in the plan;
- (5) A provision that an automatically-enrolled participant who discontinues participation in the plan within ninety days of enrollment shall receive a refund of the partici-

part's account within thirty days after discontinuing participation;

- (6) A provision that the state investment officer shall select a default investment fund to receive contributions by any automatically-enrolled participant who does not choose an investment alternative to receive the participant's contributions;
- (7) A provision authorizing participating units and the system to make contributions to the plan for the benefit of participants;
- (8) A provision that the plan shall adhere to notice requirements to automatically-enrolled participants in accord with Internal Revenue Service Rulings 98-30 and 2000-8;
- (9) A provision that automatic enrollment does not require advance authorization by a participant, which is hereby deemed to be an exception to the provisions of any state law requiring employee authorization for a payroll deduction or any similar ordinance of a local participating unit; and
- (10) A provision that the amount of compensation deferred by an automatically-enrolled participant shall automatically increase by a specified amount each year unless the participant elects not to participate in automatic escalation or elects to defer a different amount than specified.

If a participant discontinues participation pursuant to subdivision (4), that act is a permissive withdrawal pursuant to § 414(w) of the Internal Revenue Code.

**Source:** SL 2008, ch 25, § 1; SL 2013, ch 20, § 18; SL 2015, ch 29, § 1.

**Administrative Code References**

Automatic enrollment, see S.D. Admin. R. 62:03:07:01 et seq.  
 Employer contributions, system contributions, see S.D. Admin. R. 62:03:02:05.01.

**Library References**

States  $\S$ 64.1(4).  
 Westlaw Topic No. 360.  
 C.J.S. States  $\S\S$  89, 196 to 198, 203, 211, 213 to 215.

**3-13-57. Designated Roth contribution program**

The board may establish a designated Roth contribution program within the deferred compensation plan. For the pur-

poses of this section, a designated Roth contribution is an elective salary deferral that is:

- (1) Designated irrevocably by the participant at the time of the deferred election as a designated Roth contribution that is being made in lieu of all or a portion of the pre-tax elective deferrals the participant is otherwise eligible to make under the plan; and
- (2) Treated by the employer as includable in the participant's income at the time the participant would have received that amount in compensation if the participant had not made a deferred election.

The board shall, pursuant to chapter 1-26, promulgate rules relating to distributions, conversions, transfers, rollovers, and limitations with regard to the designated Roth contribution program in accordance with federal law.

**Source:** SL 2012, ch 28, § 1.

**Administrative Code References**

Additional recordkeeping requirements, see S.D. Admin. R. 62:03:04:05.01.

Correction of errors, excess deferrals, see S.D. Admin. R. 62:03:06:07.

Designated Roth contributions treated as deferrals, see S.D. Admin. R. 62:03:01:02.

Distribution directed by participant, see S.D. Admin. R. 62:03:05:05.01.

Establishment of accounts, see S.D. Admin. R. 62:03:04:05.

In-plan Roth conversion, see S.D. Admin. R. 62:03:06:03.03.

Roth contributions allowed, see S.D. Admin. R. 62:03:03:02.01.

Trustee-to-trustee transfer and rollover into account, see S.D. Admin. R. 62:03:06:03.

**Library References**

States [§](#)64.1(4).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

**CHAPTER 3-13A**  
**SOUTH DAKOTA SPECIAL PAY**  
**RETIREMENT PROGRAM**

- Section
- 3-13A-1. Special pay retirement program established.
  - 3-13A-2. Definitions.
  - 3-13A-3. Special pay fund established.
  - 3-13A-4. Board controls program as fiduciary—Promulgation of rules.
  - 3-13A-5. Transfer of special pay to fund upon termination of employment—Contribution limit.
  - 3-13A-6. Time for transfer of compensation to trust.
  - 3-13A-7. Participant account.
  - 3-13A-8. Vesting of participant account—Forfeiture.
  - 3-13A-9. Investment of funds.
  - 3-13A-10. Lump-sum distribution to participant.
  - 3-13A-11. Investment alternatives—Transfer of account balances by participants.
  - 3-13A-12. Transfer of funds from terminated investment selection.
  - 3-13A-13. Allocation of investment return among participant accounts—Accounting dates.
  - 3-13A-14. Valuation of investment alternatives.
  - 3-13A-15. Beneficiaries of participant's account.
  - 3-13A-16. Payments and benefits under program not assignable or subject to creditors' actions.
  - 3-13A-17. Powers and duties of administrator.
  - 3-13A-18. Election by participating units of retirement system to participate in program—Rescission of participation.
  - 3-13A-19. Trustee-to-trustee transfer of participant's account to government defined-benefit retirement plan.
  - 3-13A-20. Rollover transfer of participant's account.
  - 3-13A-21. Rollover transfer of participant's account in another plan.
  - 3-13A-22. Distribution from participant's account—Forms of distribution—Time for election.
  - 3-13A-23. Date for commencement of annuity distributions—Interest—Distribution after participant's death.
  - 3-13A-24. State investment officer to act as fiduciary—Certain persons prohibited from acting as third-party administrator or vendor.
  - 3-13A-25. Limitation of liability to participants.

**Administrative Code References**

Special pay retirement program, see  
S.D. Admin. R. 62:04:01:01 et seq.

**3-13A-1. Special pay retirement program established**

There is hereby established the South Dakota special pay retirement program. It is the intent of the Legislature that the special pay retirement program shall become a qualified plan under § 401(a) of the code and that the program shall be

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treated as a governmental plan under § 414(d) of the code. It is the further intent of the Legislature that special pay transmitted to the fund is picked up by the participating unit and thus shall be designated as an employer contribution under § 414(h)(2) of the code.

**Source:** SL 2004, ch 43, § 1; SDCL § 3-12-165; SL 2005, ch 28, § 1.

**Administrative Code References**  
Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:04:03:02.

Westlaw Topic No. 360.  
C.J.S. States §§ 89, 196 to 198, 203, 211 to 213, 216 to 217, 219 to 220.

**Library References**  
States Ⓔ64.1(3).

### 3-13A-2. Definitions

The definitions contained in § 3-12-47 apply to this chapter unless otherwise so specified. In addition, the following terms mean:

- (1) "Account," the record for each participant reflecting the amount of the participant's special pay transmitted to the fund, allocated investment gains and losses thereon, and administrative charges against those amounts;
- (2) "Accounting date," the date on which an investment is valued and the total investment return is allocated to a participant's account;
- (3) "Administrator," the administrator of the South Dakota Retirement System as provided in § 3-12-55;
- (4) "Board," the South Dakota Retirement System Board of Trustees as established under § 3-12-48;
- (5) Deleted by SL 2013, ch 20, § 19;
- (6) "Fund," the South Dakota special pay fund established pursuant to § 3-13A-3;
- (7) "Normal retirement date," the date a participant may retire pursuant to the provisions of chapter 3-12 without reduced benefits;
- (8) "Participant," a terminated employee of a participating unit who has reached the calendar month prior to the month of the employee's fifty-fifth birthday and who received six hundred dollars or more in special pay;

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- (9) "Participating unit," the State of South Dakota, the South Dakota Board of Regents, or any other political subdivision of the state that participates in the program;
- (9A) "Plan year," a calendar year ending on December thirty-first;
- (10) "Program," the South Dakota Special Pay Retirement Program created pursuant to §§ 3-13A-1 to 3-13A-25, inclusive;
- (11) "Special pay," compensation other than regular salary or wages granted to a participant and transferred in a lump-sum to the fund at the termination of the participant's employment;
- (12) "Third-party administrator," a person who, pursuant to contract, handles administration of the program on behalf of the board and the administrator; and
- (13) "Vendor," a person or organization selected by the state investment officer to provide investment or insurance products to the program.

**Source:** SL 2004, ch 43, § 2; SDCL § 3-12-166; SL 2005, ch 28, § 1; SL 2006, ch 22, § 1; SL 2008, ch 20, § 18; SL 2013, ch 20, § 19; SL 2013, ch 22, §§ 1, 2.

### **3-13A-3. Special pay fund established**

The South Dakota special pay fund is hereby established. All compensation transmitted to the fund pursuant to §§ 3-13A-1 to 3-13A-25, inclusive, shall be deposited in the fund. Expenditures from the fund shall be paid on warrants drawn by the state auditor and supported by vouchers approved by the administrator. All administrative expenses shall be budgeted and expended pursuant to chapters 4-7, 4-8, 4-8A, and 4-8B. All money in the fund and all property and rights held by the fund shall be held in trust for the exclusive benefit of the participants at all times until made available to a participant or the participant's beneficiary. All benefits payable under this program shall be paid and provided for solely from the fund and a participating unit assumes no liability or responsibility therefor. Any trust under the program shall be established pursuant to a written agreement that constitutes a valid trust under the law of South Dakota.

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**Source:** SL 2004, ch 43, § 3; SDCL § 3-12-167; SL 2005, ch 28, § 1.

**Library References**  
States ⌘127.

Westlaw Topic No. 360.  
C.J.S. States §§ 386 to 387.

### **3-13A-4. Board controls program as fiduciary—Promulgation of rules**

The program shall be under the authority of the board. The board shall be held to the standard of conduct of a fiduciary and shall carry out its functions solely in the interest of the participants and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The board may promulgate rules necessary to establish uniform procedures for the administration of the program and to insure uniformity of application of the provisions of §§ 3-13A-1 to 3-13A-25, inclusive. Rules may be promulgated in regard to membership, contributions and the collection thereof, fees for administration of the program, and procedures for application for benefits and payment of benefits. The rules shall be promulgated pursuant to chapter 1-26 and shall be in accordance with the provisions of §§ 3-13A-1 to 3-13A-25, inclusive.

**Source:** SL 2004, ch 43, § 4; SDCL § 3-12-168; SL 2005, ch 28, § 1.

**Administrative Code References**  
Special pay retirement program, see  
S.D. Admin. R. 62:04:01:01 et seq.

Westlaw Topic No. 360.  
C.J.S. States §§ 89, 196 to 198, 203,  
211, 213, 216.

**Library References**  
States ⌘64.1(1).

### **3-13A-5. Transfer of special pay to fund upon termination of employment—Contribution limit**

Upon a participant's termination of employment, the participating unit shall transmit the gross amount of the participant's special pay to the fund. However, except to the extent permitted under § 414(v) of the code, if applicable, a contribution allocated to a participant's account under the program may not exceed forty-one thousand dollars, as adjusted for increases in the cost-of-living pursuant to § 415(d) of the code, or one hundred percent of the participant's compensation, as identified in § 415(c)(3) of the code for the calendar year. For the

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purposes of the limitations under this section, all of the defined contribution plans of a participant's employer, whether terminated or current, shall be treated as a single defined contribution plan.

**Source:** SL 2004, ch 43, § 5; SL 2005, ch 27, § 2; SDCL § 3-12-169; SL 2005, ch 28, § 1; SL 2013, ch 22, § 3.

#### Cross References

Longevity pay for state employees, see § 3-8-13.

Payment for accrued unused sick leave on termination of employment, see § 3-6C-12.

Vacation on retirement or resignation, lump-sum payment option, see § 3-6C-6.

#### Library References

States ☞64.1(6).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213, 217, 219 to 221, 223.

#### Administrative Code References

Qualifications in regard to compensation, see S.D. Admin. R. 62:04:01:03.

### 3-13A-6. Time for transfer of compensation to trust

For the proper administration of the accounts of participants, all amounts of compensation subject to this chapter shall be transferred to the trust not later than fifteen business days after the end of the month in which the compensation otherwise would have been paid to the participant.

**Source:** SL 2004, ch 43, § 6; SDCL § 3-12-170; SL 2005, ch 28, § 1; SL 2008, ch 20, § 19.

#### Library References

States ☞64.1(4).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

### 3-13A-7. Participant account

An account shall be established for each participant. The account shall be the basis for any distribution to the participant or to the participant's beneficiary, surviving spouse, surviving children, or estate pursuant to § 3-13A-15.

**Source:** SL 2004, ch 43, § 7; SDCL § 3-12-171; SL 2005, ch 28, § 1.

#### Library References

States ☞64.1(4).

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

**3-13A-8. Vesting of participant account—Forfeiture**

A participant's account is fully vested in the program at any time on or after the date the participant begins participation in the program. A participant's account is not subject to any forfeiture pursuant to the provisions of the program. A loss as described in § 3-13A-25 is not considered to be a forfeiture.

**Source:** SL 2005, ch 27, § 1.

**Library References**  
States ⚡64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

**3-13A-9. Investment of funds**

Moneys held by the fund may be invested by program participants in such investments as are deemed appropriate by the state investment officer. The state investment officer may enter into contracts for investment alternatives and to offer internal investment alternatives. The program administrator or third-party administrator may transfer funds to, from, and among the respective investment alternatives.

**Source:** SL 2004, ch 43, § 8; SDCL § 3-12-172; SL 2005, ch 28, § 1.

**Library References**  
States ⚡64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

**3-13A-10. Lump-sum distribution to participant**

A participant who elects an immediate total lump-sum distribution from the program shall be guaranteed payment of the entire amount of the participant's special pay, plus any earnings, and less any mandatory income tax withholding and fees established by the board, within a period that is not longer than is reasonable from the date the participant's funds were received by the program on behalf of the participant.

**Source:** SL 2004, ch 43, § 9; SDCL § 3-12-173; SL 2005, ch 28, § 1.

**Administrative Code References**  
Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:04:03:02.

**Library References**  
States ⚡64.1(4).  
Westlaw Topic No. 360.  
C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

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### 3-13A-11. Investment alternatives—Transfer of account balances by participants

Each participant may elect to have the participant's funds invested in one or more of the investment alternatives selected by the state investment officer pursuant to § 3-13A-9. Subject to any limitations imposed by the administrator, a vendor, or a third-party administrator, a participant may elect to transfer any portion of the account balance from one offered investment alternative to another at any time, if notice is given to the administrator or the third-party administrator. Any costs associated with such a transfer shall be borne by the participant and shall be deducted from the participant's account. If, due to a payroll error, a participant's deferral is deposited in an investment alternative other than the one selected by the participant, the administrator or third-party administrator may correct the error by transferring the participant's deferral to the proper investment alternative, subject to any limitations which may be imposed by the vendor. No retroactive adjustment may be made.

**Source:** SL 2004, ch 43, § 10; SDCL § 3-12-174; SL 2005, ch 28, § 1.

**Library References**  
States Ⓔ64.1(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

### 3-13A-12. Transfer of funds from terminated investment selection

If a contract between the state investment officer and a vendor is terminated and a participant fails to notify the administrator or third-party administrator of the participant's new investment selection before the contract terminates, the administrator or third-party administrator shall transfer that participant's account to the investment alternative designated by the state investment officer.

**Source:** SL 2004, ch 43, § 11; SDCL § 3-12-175; SL 2005, ch 28, § 1.

**Library References**  
States Ⓔ64.1(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

**3-13A-13. Allocation of investment return among participant accounts—Accounting dates**

The total investment return on any offered investment shall be allocated to the account of each participant based on the proportion the participant's account bears to all other accounts which have been invested in the same investment alternative. Allocations shall be made on each accounting date. The last day of each calendar quarter is an accounting date. The board may provide additional accounting dates.

**Source:** SL 2004, ch 43, § 12; SDCL § 3-12-176; SL 2005, ch 28, § 1.

**Library References**

States ~~64~~64.1(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

**3-13A-14. Valuation of investment alternatives**

Each offered investment alternative shall be valued on each accounting date. The valuation shall be at market value. Any charges against the value shall be explicitly disclosed. Each participant shall be provided with a statement of the participant's account by no later than forty-five days after the close of each calendar quarter.

**Source:** SL 2004, ch 43, § 13; SDCL § 3-12-177; SL 2005, ch 28, § 1.

**Library References**

States ~~64~~64.1(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

**3-13A-15. Beneficiaries of participant's account**

A participant may designate a beneficiary to receive the participant's benefits under the program in case of the death of the participant. If no beneficiary is designated or the beneficiary has predeceased the participant, the participant's benefits shall be paid as follows:

- (1) To the participant's surviving spouse;
- (2) If there is no surviving spouse, then to all surviving children of the participant, irrespective of age, on a share-alike basis; or
- (3) If there is no surviving spouse and there are no surviving children, then to the participant's estate.

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**Source:** SL 2004, ch 43, § 14; SDCL § 3-12-178; SL 2005, ch 28, § 1; SL 2012, ch 26, § 15.

**Library References**  
States ⌘64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

### **3-13A-16. Payments and benefits under program not assignable or subject to creditors' actions**

Notwithstanding the provisions of § 3-13A-15, no participant may assign or otherwise alienate any right to any payment or benefit under the program. The right of a participant to any payment or benefit is not subject to the rights of the participant's or any beneficiary's creditors, and is exempt from executions, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons, except as required under applicable law, including any qualified domestic relations order as defined in § 414(p) of the Internal Revenue Code, or as is otherwise specifically provided in this chapter.

**Source:** SL 2004, ch 43, § 15; SDCL § 3-12-179; SL 2005, ch 28, § 1; SL 2008, ch 20, § 20; SL 2013, ch 20, § 20.

**Library References**  
States ⌘64.1(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

### **3-13A-17. Powers and duties of administrator**

The administrator shall administer the program, shall have all powers necessary to accomplish that purpose, and shall determine all questions arising under or in connection with the program. The administrator may hire additional employees as may be required and shall set the remuneration of such employees. In addition, the administrator, with the approval of the board, may contract with vendors for third-party administration of various duties under the program as the administrator sees fit. The administrator shall execute any agreements as are necessary to carry out the provisions of §§ 3-13A-1 to 3-13A-25, inclusive, except such agreements as are executed by the state investment officer pursuant to § 3-13A-9.

**Source:** SL 2004, ch 43, § 16; SDCL § 3-12-180; SL 2005, ch 28, § 1.

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**Library References**  
States ~~64.1~~(1).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213, 216.

### **3-13A-18. Election by participating units of retirement system to participate in program—Rescission of participation**

Any public employer that is a participating unit of the system established under chapter 3-12 may become a participating unit under this chapter at any time on or after July 1, 2004. The decision to become a participating unit shall be made by the elected official, the appointed official, or the governing body in charge of the unit. The unit shall become a participating unit as soon as notice of the decision has been delivered in writing to the system. A participating unit at a later date may choose to rescind such status and may do so by delivering written notice of the decision to the system. However, if such a rescission occurs, the rescission does not affect the status of any participant who was employed by that unit.

**Source:** SL 2004, ch 43, § 17; SDCL § 3-12-181; SL 2005, ch 28, § 1.

**Library References**  
States ~~64.1~~(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

### **3-13A-19. Trustee-to-trustee transfer of participant's account to government defined-benefit retirement plan**

For the purpose of acquiring credited service in a qualified governmental defined-benefit retirement plan as identified under § 401(a) and defined in § 414(d) of the code, a participant may transfer a portion or all of the participant's account in the program by trustee-to-trustee transfer to the government defined-benefit retirement plan.

**Source:** SL 2004, ch 43, § 18; SDCL § 3-12-182; SL 2005, ch 28, § 1.

**Library References**  
States ~~64.1~~(4).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211, 213 to 215.

### **3-13A-20. Rollover transfer of participant's account**

The board shall establish by rule promulgated pursuant to chapter 1-26 the parameters under which a participant, a

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participant's surviving spouse, or a participant's beneficiary may transfer a portion or all of the participant's account by rollover to a plan which is an eligible plan under the code.

**Source:** SL 2004, ch 43, § 19; SDCL § 3-12-183; SL 2005, ch 28, § 1; SL 2009, ch 20, § 5.

<b>Administrative Code References</b>	Westlaw Topic No. 360.
Direct rollovers, see S.D. Admin. R. 62:04:03:01.	C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

#### Library References

States ⚡64.1(4).

### 3-13A-21. Rollover transfer of participant's account in another plan

To the extent permitted by law, a participant may transfer a portion or all of the participant's account in another plan which is eligible under § 401(a), 403(b), 408, or 457 of the code into this program by rollover. The program shall account for such amounts separately.

**Source:** SL 2004, ch 43, § 20; SDCL § 3-12-184; SL 2005, ch 28, § 1.

<b>Library References</b>	C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.
States ⚡64.1(4).	
Westlaw Topic No. 360.	

### 3-13A-22. Distribution from participant's account—Forms of distribution—Time for election

A participant is entitled to receive a distribution from the participant's account upon written application to the administrator or third-party administrator. The participant may elect, on forms prescribed by the administrator or third-party administrator, the time at which distributions under the program are to commence by designating the month and year during which the first distribution is to be made. The participant may elect to receive the participant's distribution in any of the following forms:

- (1) A lump sum;
- (2) Equal monthly installments over a fixed period; or
- (3) Any other form offered by the administrator or a third-party administrator.

The application and election shall be made prior to the time any amounts become payable. A participant or a beneficiary who has chosen a payment form may change that payment option, if no payment has yet been made, and subject to any administrative restrictions and charges established by the board.

**Source:** SL 2004, ch 43, § 21; SDCL § 3-12-185; SL 2005, ch 28, §1.

**Administrative Code References**

Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:04:03:02.

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

**Library References**

States ⚡64.1(4).

**3-13A-23. Date for commencement of annuity distributions—  
Interest—Distribution after participant's death**

A participant who does not take a total lump-sum distribution, transfer funds by rollover pursuant to § 3-13A-20, or transfer funds by trustee-to-trustee transfer pursuant to § 3-13A-19 may begin annuity distributions by selecting a retirement date, as set out in § 3-13A-22. If a participant does not make a selection, the participant's normal retirement date is as defined in subdivision 3-13A-2(7). However, distributions of a participant's benefits shall begin no later than the later of April first of the calendar year following the calendar year in which the participant reaches seventy and one-half years of age, or April first of the calendar year following the calendar year of the participant's retirement.

If the distribution begins prior to the participant's death, the entire interest shall be distributed over a period not to exceed the life expectancy of the participant or the life expectancies of the participant and a designated beneficiary. Any amount not distributed during the participant's life shall be distributed after the participant's death at least as rapidly as under the distribution method being used on the date of the participant's death. If the distribution begins after the participant's death, the entire amount payable to the participant shall be paid during a period of no more than five years, unless the distribution commences within one year and the participant's spouse is the named

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beneficiary, then during the life expectancy of the surviving spouse. If the surviving spouse is the participant's sole designated beneficiary and the surviving spouse then dies before distributions are required to begin, the provisions of this section apply as if the surviving spouse were the participant.

**Source:** SL 2004, ch 43, § 22; SDCL § 3-12-186; SL 2005, ch 28, § 1.

#### **Administrative Code References**

Distributions deemed reasonable and made in good faith under federal law, see S.D. Admin. R. 62:04:03:02.

Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213 to 215.

#### **Library References**

States Ⓔ64.1(4).

### **3-13A-24. State investment officer to act as fiduciary—Certain persons prohibited from acting as third-party administrator or vendor**

The state investment officer shall be held to the standard of conduct of a fiduciary and shall carry out all functions solely in the interests of the participants and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. No employee of a participating unit and no spouse or dependent of the employee may act as or represent a third-party administrator or a vendor in a matter concerning the program, except that the state investment officer and the state investment officer's employees may invest all or part of the fund pursuant to § 3-13A-9.

**Source:** SL 2004, ch 43, § 23; SDCL § 3-12-187; SL 2005, ch 28, § 1.

#### **Library References**

States Ⓔ64.1(1).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203, 211, 213, 216.

### **3-13A-25. Limitation of liability to participants**

Neither the program nor any participating unit is liable to any participant for losses arising out of any decrease in the value of any investments held under the program. The liability of the program to any participant is limited to the value of the participant's account on the date the participant chooses to begin payment pursuant to the provisions of the program. In

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no event may any member of the board, the administrator, or any member of the administrator's staff have any liability for any action taken with respect to the program unless such action has been taken in bad faith.

**Source:** SL 2004, ch 43, § 24; SDCL § 3-12-188; SL 2005, ch 28, § 1.

**Library References**  
States ~~64.1~~(3).  
Westlaw Topic No. 360.

C.J.S. States §§ 89, 196 to 198, 203,  
211 to 213, 216 to 217, 219 to 220.

## **CHAPTER 3-13B**

### **STATE CEMENT PLANT EMPLOYEE RETIREMENT [REPEALED]**

**3-13B-1 to 3-13B-3. Repealed by SL 2014, ch 21, §§ 10 to 12**

**Historical and Statutory Notes**

Section 3-13B-1, "State Cement Plant former employee retirement benefits", was derived from SL 2010, ch 32, § 3.

Section 3-13B-2, "Maximum retirement benefits for cement plant former employees—Computation of benefits",

was derived from SL 1976, ch 39, § 1; SDCL § 5-17-5.2; SL 2010, ch 32, § 7.

Section 3-13B-3, "Promulgation of rules", was derived from SL 2010, ch 32, § 10.

See §§ 3-12-217 to 3-12-222.



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**ADMINISTRATIVE RULES  
OF SOUTH DAKOTA**

**Title 20  
South Dakota Retirement System**

<b>Article</b>	<b>Chapter</b>
20:16. CEMENT PLANT EMPLOYEE RETIREMENT PLANS. ....	20:16:01

**ARTICLE 20:16  
CEMENT PLANT EMPLOYEE  
RETIREMENT PLANS**

<b>Chapter</b>
20:16:01. Definitions.
20:16:02 to 20:16:08. Deleted.
20:16:09 to 20:16:13. Repealed.
20:16:14. Repealed.
20:16:15. Retirement plan 2A.
20:16:16. Repealed.
20:16:17. Retirement plan 4A.
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**CHAPTER 20:16:01  
DEFINITIONS**

<b>Section</b>
20:16:01:01. Definitions.

**20:16:01:01. Definitions**

Terms used in this Article mean:

- (1) "Commission," the former South Dakota State Cement Plant Commission or its successor state agency or the State of South Dakota;
- (2) "Employee," any salaried or hourly person employed by the commission;

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(3) "Plant," the South Dakota state cement plant at Rapid City, South Dakota;

(4) "Management," the president, vice president and controller, or their designees;

(5) "Union," the United States steel workers and any other union under contract with the employees of the plant;

(6) "Board," the South Dakota Retirement System Board of Trustees created pursuant to SDCL 3-12-48.

**Source:** 2 SDR 38, effective November 26, 1975; transferred from § 15:01:01:01, effective July 1, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**CHAPTERS 20:16:02 to 20:16:08**

(Deleted. SL 2010, ch 32, § 9, effective June 30, 2011)

**CHAPTERS 20:16:09 to 20:16:13**

(Repealed. 28 SDR 109, effective February 11, 2002)

**CHAPTER 20:16:14**

**RETIREMENT PLAN 1A**

(Repealed. 40 SDR 197, effective May 27, 2014)

**CHAPTER 20:16:15**

**RETIREMENT PLAN 2A**

**Section**

20:16:15:01. Definitions.

20:16:15:02. Term of coverage.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:15:01**

### **Section**

- 20:16:15:03. Participation in benefits.
- 20:16:15:04. Contributions by the commission.
- 20:16:15:05. Forfeiture.
- 20:16:15:06. Qualifications for normal pension.
- 20:16:15:07. Amount of normal pension.
- 20:16:15:08. Qualifications for early retirement pension.
- 20:16:15:09. Amount of early retirement pension.
- 20:16:15:10. Disability pension.
- 20:16:15:11. Amount of disability pension.
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- 20:16:15:16. Joint and survivor benefit.
- 20:16:15:17. Election of joint and survivor benefit.
- 20:16:15:18. Effective date of joint and survivor benefit.
- 20:16:15:19. Revocation of joint and survivor benefit.
- 20:16:15:20. Limitation on joint and survivor benefit option.
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- 20:16:15:35. Amendment and termination of the plan.

### **20:16:15:01. Definitions**

Terms used in this chapter mean:

- (1) "Plan," the retirement plan set forth in this chapter and any modifications, amendments, extensions, or renewals of it;
- (2) "Collective bargaining agreement," any written contract between a union and the commission requiring contributions to the plan or setting forth benefits to be provided, including all extensions or renewals and its successor agreements of it;
- (3) "Employee," an employed person, including an officer, whose customary employment is for at least 20 hours in a week and for at least five months in any calendar year;

(4) "Pensioner," an employee who is retired and who is receiving benefits under the plan;

(5) "Credited service," period of employment for purposes of determining eligibility for benefits under the plan, as set forth in §§ 20:16:15:21 to 20:16:15:23, inclusive;

(6) "Actuarial equivalent," a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods last adopted for this purpose by the board on the advice of an actuary;

(7) "Beneficiary," any person, estate, or trust designated by the employee or pensioner to receive benefit payments, if any, after the death of the employee or pensioner;

(8) "Earnings," the compensation paid to an employee by the commission, excluding premium pay, overtime pay, and higher pay rates for temporary job assignments. For the purpose of converting an hourly rate to a monthly rate, four and one-third weeks per month at 40 hours per week shall be utilized;

(9) "Final average earnings," the average of an employee's highest consecutive 36 calendar months of earnings in the last 72 calendar months of the employee's credited service immediately preceding the earlier of the calendar month in which the employee's retirement date occurs or the calendar month in which the employee attains the age of 65. Final average earnings for any piece worker shall be calculated as stated above plus piece work pay as described in the collective bargaining agreement for vacations, sick leave, or authorized leaves of absence;

(10) "Effective date," March 1, 1968;

(11) "Restated plan effective date," February 1, 1974;

(12) "Retirement date," the date an employee actually retires under the applicable provisions of the plan. "Normal retirement date" means the first day of the calendar month coincident with or next following the employee's 65th birthday;

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(13) “Compulsory retirement date,” the first day of the calendar month coincident with or next following the employee’s 67th birthday;

(14) “Fund,” the fund created pursuant to SDCL chapter 3–12;

(15) “Totally disabled,” any disability which prevents the employee from performing the employee’s duties and entitles the employee to receive a federal Social Security Act disability benefit;

(16) “Number,” the singular number includes the plural unless a different meaning is plainly required by the context.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

### **20:16:15:02. Term of coverage**

Retirement Plan 2A covers any employee who retired from employment or terminated employment and who qualified to be an inactive vested employee with the commission from February 1, 1974, to January 31, 1977, inclusive.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219

### **20:16:15:03. Participation in benefits**

Any employee, as defined in subdivision 20:16:15:01(3), is eligible to participate in the pension plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

### **20:16:15:04. Contributions by the commission**

Repealed.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; repealed, 40 SDR 197, effective May 27, 2014.

**20:16:15:05. Forfeiture**

Any amount that is forfeited by an employee pursuant to any of the provisions of the plan shall remain in the fund.

**Source:** 29 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:06. Qualifications for normal pension**

A retiring employee is entitled to a normal pension if the employee meets all of the following requirements:

- (1) Has attained the age of 65;
- (2) Has accumulated at least ten years of credited service;  
and
- (3) Retires from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:07. Amount of normal pension**

The normal pension amount is one and four-tenths percent of final average earnings times the number of years of credited service, up to a maximum of 35 years.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:08. Qualifications for early retirement pension**

An employee is entitled to an early retirement pension if the employee meets all the following requirements:

- (1) Has attained the age of 62 but has not yet attained age 65;

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:15:10**

(2) Has accumulated at least ten years of credited service;  
and

(3) Retires from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:09. Amount of early retirement pension**

The amount of the early retirement pension is determined by calculating the amount of the normal pension to which the employee would be entitled if the employee were age 65 on the effective date the employee's early retirement pension reduced by four percent each year for which the date of early retirement precedes the employee's attaining age 65.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:10. Disability pension**

An employee is entitled to a disability pension if the employee meets all the following requirements:

(1) Has become totally and permanently disabled on or after the date the plan was restated;

(2) Has completed at least five years of credited service;

(3) Retires from active employment with the commission;  
and

(4) Has been approved for and receives a disability benefit under the federal Social Security Act.

The board may, at any time, require evidence of continued entitlement to a social security disability benefit.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:11. Amount of disability pension**

The disability pension shall be equal to the normal pension otherwise payable, computed to the date of disability, without any reduction for disability commencing prior to age 65. In no event may the disability pension be less than \$100 per month.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:12. Disability pension payments**

Payment of the disability pension shall commence five months after the month in which the disability occurs and shall continue thereafter for so long as the disability pensioner remains totally disabled, upon attainment of age 65, a disability pensioner shall have benefits continued regardless of whether or not the pensioner remains totally disabled.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:13. Reemployment of disability pensioner**

A disability pensioner who is no longer entitled to a disability benefit may be entitled to a normal or early pension unaffected by the prior receipt of a disability pension.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:14. Preretirement death benefit**

If an employee who has completed at least ten years of credited service dies prior to filing for a pension benefit, the employee's surviving spouse shall receive a monthly pension equal to 50 percent of the normal pension otherwise payable, computed to the date of death, without any reduction for death prior to age 65. The benefit to the surviving spouse shall be continued until such time as the spouse remarries or dies. If the

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employee does not have a surviving spouse, no benefits are payable.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 2-12-219.

### **20:16:15:15. Normal form of pension benefits**

The normal form of pension benefits is a life annuity, payable monthly, commencing on the employee's retirement date and continuing to the last monthly payment for the month in which the pensioner dies.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:16. Joint and survivor benefit**

In lieu of the pension otherwise payable to an employee, an employee entitled to a normal or early retirement pension may elect to receive a smaller monthly pension during the employee's lifetime, and after the employee's death such smaller benefit will be continued to the employee's beneficiary, called a contingent annuitant, during the latter's lifetime.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:17. Election of joint and survivor benefit**

To be effective, a joint and survivor option election shall be made by written request filed with the board not less than 12 months prior to the employee's retirement date. If such an election is not filed at least 12 months prior to the employee's retirement date, the option may not take effect until after 12 months have elapsed after the election, and it shall then be effective with respect to all subsequent months. Until the option takes effect, the benefit shall be payable in the normal form only, as if the option had not been elected and benefits to be

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paid shall be retroactively adjudged if the option is put into effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:18. Effective date of joint and survivor benefit**

The joint and survivor option shall take effect only if the pensioner and the pensioner's contingent annuitant are both alive on the date when it is otherwise to take effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:19. Revocation of joint and survivor benefit**

Once elected, the joint and survivor option may not be revoked except under the following conditions:

(1) Revocation must be made in writing in a form prescribed by the board and filed with the board before the end of the first calendar month for which a pension benefit has become payable to the pensioner;

(2) Revocation may not become effective until 12 months after it has been filed. Until then any benefits payable shall be paid in the amount determined under the joint and survivor option, without retroactive adjustment of such payments once revocation takes effect;

(3) The option shall be automatically revoked if the contingent annuitant dies. If the contingent annuitant is the employee's spouse and the spouse is divorced from the employee before a pension in the optional form has become effective, the employee may continue the option if, within 90 days of such an event, the employee makes a choice of another contingent annuitant and communicates it to the board in writing;

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(4) The designation of a contingent annuitant cannot be changed after the first pension payment under the option has been made to the pensioner.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:20. Limitation on joint and survivor benefit option**

The joint and survivor option may not be payable if it would result in a monthly pension of less than \$20 to the pensioner or the contingent annuitant.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:21. Credited service**

Credited service under the plan means the last period of continuous employment with the commission prior to termination of employment for the purpose of retirement. Credited service may not exceed 35 years and may not be granted after attainment of age 65.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219

### **20:16:15:22. Interruption of continuous employment**

If continuous employment is interrupted for any cause, except as provided in the plan, any credited service accrued for periods of employment prior to the interruption may not be considered, and the employee shall be treated as a new employee in determining credited service. However, continuous employment is not considered interrupted by leaves of absence from regular employment authorized by the commission for:

- (1) Disability, except in connection with retirement;

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(2) Service in the armed forces of the United States, if the employee returns to employment with the commission within the period of time prescribed by law for the reemployment of veterans; or

(3) Not more than 12 months for any other cause or reason satisfactory to the commission. During any period of authorized leaves of absence, no service credit may be granted.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:23. Vesting of service credits**

An employee who terminates employment for any reason other than death or early or normal retirement is entitled to a deferred pension if the employee has accumulated at least five years of credited service. The deferred pension shall commence on the normal retirement date. The deferred pension amount shall be calculated utilizing the benefit formula in effect at the time of the employee's termination with the commission and years of continuous employment to the date of termination.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:24. Advance written applications required**

An application for the commencement of pension benefits shall be in writing on a form and in a manner prescribed by the board, and shall be filed with the board in advance of the first month for which benefits are to be paid.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:25. Information required**

An employee, pensioner, or beneficiary shall furnish the board with any information or proof requested by it and rea-

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:15:27**

sonably required to administer the plan. Failure on the part of any person to comply with such a request promptly, completely, and in good faith shall be sufficient grounds for denying benefits to the person. If a pensioner or beneficiary makes a false statement material to any claim for benefits, the person shall be denied all benefits, and the board may recover any payments made in reliance on the false statement.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:26. Payments for incompetents**

If a pensioner is mentally or physically incompetent, payments shall be made to any person who has satisfied the board that he or she is caring for the pensioner or beneficiary. Such payments shall be a complete discharge of the liabilities under this plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:27. Nonalienation of benefits**

No benefit payable at any time under the plan may be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind. Any attempt to encumber such a benefit in any way is void. A benefit is not subject in any manner to the debts or liabilities of any person to whom the benefit is payable. If, by reason of bankruptcy, insolvency, or assignment of creditors of an employee or pensioner or any other happening at any time such benefits would devolve upon anyone else or would not be enjoyed by the employee or pensioner, the board may terminate the employee's or pensioner's interest in any such benefits and hold or apply them to or for the benefit of the person, the person's spouse, children, or other dependents or any of them in such manner as the board deems proper.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:28. Terms of employment not affected**

Under no circumstances may an employee's participation in the plan be construed to constitute a contract of continuing employment or in any manner obligate the board to continue or discontinue the services of an employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:29. Conditions for forfeiture of benefit rights**

Any retirement benefit that may be payable or become payable and all rights under the plan in favor of any employee or pensioner shall be forfeited if, prior to or after the termination of employment by the commission, the employee or pensioner confesses to or is convicted of any crime perpetrated against the commission involving the embezzlement of commission funds or property.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:30. Reference to other documents**

Any reference in the plan to rights under the plan shall be construed as reference to rights also under any instrument, trust agreement, or insurance or annuity contract created or entered into to effect the purposes of the plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:15:34**

### **20:16:15:31. Rounding of benefit amounts**

The monthly amount of pension benefits, as computed in accordance with §§ 20:16:15:06 to 20:16:15:16, inclusive, or if any adjustment provided elsewhere is applied, shall be rounded to the next higher whole dollar amount.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:32. Improvement factor**

The benefits described in this chapter shall be increased by an amount equal to two percent of the initial benefit amount, not compounded, for each year commencing on the July 1 that is at least 12 months following the date on which the benefit was first payable.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:33. Statutory limitation**

The rules in this chapter are subject to all limitations and conditions of section 22 of chapter 35 of the 1974 Session Laws.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:15:34. Privatization of the plant**

The plant was privatized on March 16, 2001. Any pensioner or former employee who qualifies to be an inactive vested employee affected by the privatization is entitled to the benefits accrued as of the effective date of the privatization.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:15:35****ADMINISTRATIVE RULES****20:16:15:35. Amendment and termination of the plan**

The board reserves the right to amend this plan at any time subject to Internal Revenue Code rules regarding accrued benefits of the participants. No modification or amendment of the plan may make it possible for any part of the income or assets of the fund to be used for or diverted to purposes other than for the exclusive benefit of the participants and their beneficiaries. Also, no modification or amendment of the plan may reduce benefits to the participants, but benefits may be increased.

The board reserves the right to discontinue this plan in whole or in part. In the event of a termination of the plan, the rights of all affected participants to benefits then accrued shall thereupon become 100 percent vested and nonforfeitable. The board shall take such steps as it determines necessary or desirable to comply with applicable laws.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**CHAPTER 20:16:16****RETIREMENT PLAN 3A**

(Repealed. 40 SDR 197, effective May 27, 2014)

**CHAPTER 20:16:17****RETIREMENT PLAN 4A****Section**

- 20:16:17:01. Definitions.
- 20:16:17:02. Term of coverage.
- 20:16:17:03. Participation in benefits.
- 20:16:17:04. Contributions by the commission.
- 20:16:17:05. Forfeiture.
- 20:16:17:06. Qualifications for normal pension.
- 20:16:17:07. Amount of the normal pension.
- 20:16:17:08. Qualifications for early retirement pension.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:01**

### **Section**

- 20:16:17:09. Amount of the early retirement pension.
- 20:16:17:10. Disability pension.
- 20:16:17:11. Amount of the disability pension.
- 20:16:17:12. Disability pension payments.
- 20:16:17:13. Deduction of other public benefits from disability pension.
- 20:16:17:14. Reduction of disability pension of earnings in employment.
- 20:16:17:15. Reemployment of disability pensioner.
- 20:16:17:16. Conversion of disability pension to normal retirement pension at retirement age.
- 20:16:17:17. Family benefits payable on death of employee before retirement.
- 20:16:17:18. Deduction of other public benefits from family benefits.
- 20:16:17:19. Election of additional survivor protection option—Beginning and end of additional contribution.
- 20:16:17:20. Amount of additional survivor protection benefits—Termination.
- 20:16:17:21. Normal form of pension benefits.
- 20:16:17:22. Joint and survivor benefit.
- 20:16:17:23. Election of joint and survivor benefit.
- 20:16:17:24. Effective date of joint and survivor benefit.
- 20:16:17:25. Revocation of joint and survivor benefit.
- 20:16:17:26. Limitation of joint and survivor benefit option.
- 20:16:17:27. Credited service.
- 20:16:17:28. Interruption of continuous employment.
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- 20:16:17:30. Advance written applications required.
- 20:16:17:31. Information required.
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- 20:16:17:34. Terms of employment not affected.
- 20:16:17:35. Reference to other documents.
- 20:16:17:36. Rounding of benefit amounts.
- 20:16:17:37. Improvement factor.
- 20:16:17:38. Minimum distribution requirements.
- 20:16:17:39. Limitation on benefits.
- 20:16:17:40. Privatization of the plant.
- 20:16:17:41. Amendment and termination of the plan.
- Appendix A. 1971 Group Annuity Mortality Tables.

### **20:16:17:01. Definitions**

Terms used in this chapter mean:

- (1) “Plan,” “pension plan,” the retirement plan set forth in this chapter and any modifications, amendments, extensions, or renewals of it;
- (2) “Collective bargaining agreement,” a written contract between a union and the commission requiring contributions to the plan or setting forth benefits to be provided, including all extensions or renewals and successor agreements of it;
- (3) “Employee,” an employed person, including an officer, whose customary employment is for at least 20 hours in a week and for at least five months in any calendar year;

(4) "Pensioner," an employee who is retired and who is receiving benefits under the plan;

(5) "Credited service," period of employment for purposes of determining eligibility for benefits under the plan, as set forth in §§ 20:16:17:27 to 20:16:17:29, inclusive;

(6) "Actuarial equivalent," a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of the 1971 Group Annuity Mortality Table, as published in Appendix A at the end of this chapter, at 7.5 percent interest;

(7) "Beneficiary," the person, estate, or trust designated by the employee or pensioner to receive any benefit payments after the death of the employee or pensioner;

(8) "Earnings," compensation paid to an employee by the commission including base pay, the employee's elective contributions to deferred compensation plans, other deferred compensation, any short term and long term bonuses based on compensation and discretionary bonuses, but excluding any premium pay, overtime pay, higher pay rates for temporary job assignments, lump sum annual leave payment, sick leave retirement bonus payment, severance payment, or other compensation not specifically stated as being covered compensation for the retirement calculation;

(9) "Hourly conversion rate," for the purpose of converting an hourly rate to a monthly rate four and one-third weeks a month at 40 hours a week is used;

(10) "Final average earnings," the average of an employee's highest consecutive 36 calendar months of earnings in the last 72 calendar months of this credited service immediately preceding the earlier of the calendar month in which the employee's retirement date occurs. Final average earnings for any piece worker shall be calculated as stated in this subdivision plus piece work pay as described in the collective bargaining agreement for vacations, sick leave, or authorized leaves of absence;

(11) "Effective date," May 1, 1970;

**CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:01**

(12) “Restated plan effective date,” February 1, 1974;

(13) “Retirement date,” the date an employee actually retires under the applicable provisions of the plan;

(14) “Normal retirement date,” the first day of the calendar month coincident with or next following the employee’s 65th birthday;

(15) “Fund,” the fund created pursuant to SDCL chapter 3–12;

(16) “Totally disabled,” a disability that prevents the employee from performing the employee’s duties and entitles the employee to receive a federal Social Security Act disability benefit;

(17) “Number,” the singular number includes the plural unless a different meaning is plainly required by the context;

(18) “Child or children,” any employee’s unmarried dependent child who is under 19 years of age; any unmarried dependent child under 23 years of age who is a full-time student; any unmarried dependent child who is totally or permanently disabled, either physically or mentally, regardless of the child’s age, if the disability occurred before age 19; any stepchild or foster child who depends on the employee for support and lives in the household of the employee in a regular parent-child relationship; or any child of the employee conceived during the employee’s lifetime and born after the employee’s death;

(19) “Other public benefits,” the benefits provided by the old age, survivors, disability, and health insurance program provided by the federal Social Security Act, the federal civil service retirement program, federal military, disability, railroad retirement plans, workers’ compensation, or any other public retirement system.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

**20:16:17:02****ADMINISTRATIVE RULES****20:16:17:02. Term of coverage**

Retirement Plan 4A covers any employee who retired from employment or terminated employment and who qualifies to be an inactive vested employee with the commission from October 1, 1978, to June 30, 1999, inclusive.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:03. Participation in benefits**

Any employee is eligible to participate in the pension plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:04. Contributions by the commission**

Repealed.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; repealed, 40 SDR 197, effective May 27, 2014.

**20:16:17:05. Forfeiture**

Any amount that is forfeited by an employee pursuant to any of the provisions of this plan shall remain in the fund.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:06. Qualifications for normal pension**

A retiring employee is entitled to a normal pension if the employee meets all of the following requirements:

- (1) Has attained the age of 65;
- (2) Has accumulated at least five years of credited service;  
and
- (3) Retires from active employment with the commission.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:08**

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:07. Amount of the normal pension**

The normal pension amount for any employee employed prior to July 1, 1977, and not retired before February 1, 1977, is one and four-tenths percent of final average earnings times the number of years of credited service, up to a maximum of 35 years. Any employee hired subsequent to June 30, 1977, and retiring before January 1, 1993, will receive a normal pension amount equal to one percent of final average earnings times the number of years of credited service. Any employee hired subsequent to June 30, 1977, and retiring after December 31, 1992, shall receive a normal pension amount equal to 1.3 percent of final average earnings times the number of years of credited service.

The amount of earnings under the plan may not exceed the limit on compensation allowed under § 401(a)(17) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:08. Qualifications for early retirement pension**

An employee or former employee is entitled to an early retirement pension if the employee meets all the following requirements:

- (1) Has attained the age of 62 but has not yet attained age 65;
- (2) Has accumulated at least five years of credited service;
- (3) Has terminated from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**20:16:17:08****ADMINISTRATIVE RULES**

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:09. Amount of the early retirement pension**

The amount of the early retirement pension shall be determined by calculating the amount of the normal pension to which the employee would be entitled if the employee were age 65 on the effective date of the employee's early retirement pension reduced by three percent each year for which the date of early retirement precedes the employee attaining age 65.

**Source:** 28 SDR 109, effective February 11, 2002; 37 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:10. Disability pension**

An employee is entitled to a disability pension if the employee meets all the following requirements:

- (1) Has become totally disabled on or after the date the plan was restated;
- (2) Has completed at least three years of credited service or was disabled;
- (3) Retires from active employment with the commission; and
- (4) Has been approved for and receives a disability benefit under the federal Social Security Act.

The board may, at any time, require evidence of continued entitlement to a disability benefit.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:11. Amount of the disability pension**

The disability pension shall be equal to 50 percent of the highest annual earnings earned in any one of the three years immediately preceding the date of disability, increased by 10 percent of those earnings for each eligible child to a maximum

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:14**

of four children. The disability allowance shall be paid only in the form of monthly installments.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:12. Disability pension payments**

Payment of the disability pension shall begin five months after the month in which the disability occurs and shall continue thereafter for as long as the disability pensioner remains totally disabled. Upon attainment of age 65, a disability pensioner shall have benefits continued under § 20:16:17:16 regardless of whether or not the pensioner remains totally disabled.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:13 Deduction of other public benefits from disability pension**

Disability allowances shall be reduced by an amount equal to the other public benefits paid or payable. Disability allowances payable on account of children shall be reduced when children become ineligible dependents.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:14. Reduction of disability pension of earnings in employment**

If a person receiving a disability pension is employed or is self-employed in any capacity, the disability pension shall be reduced by 50 cents for each dollar earned through such employment.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 208, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**20:16:17:14****ADMINISTRATIVE RULES**

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:15. Reemployment of a disability pensioner**

A disability pensioner who is no longer entitled to a disability benefit may be entitled to a normal or early pension unaffected by the prior receipt of a disability pension.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:16. Conversion of disability pension to normal retirement pension at retirement age**

When a person who is receiving a disability pension reaches normal retirement age, or at a later date when there are no eligible children, the person's disability pension shall be terminated. Thereafter the person shall receive the pension payable for normal retirement at that age, calculated on the credited service the person would have accrued to age 65 and earnings projected at two percent per year not compounded. In no event, however, may the recomputed pension be greater than the disability pension payable to the employee without eligible children under this provision.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:17. Family benefits payable on death of employee before retirement**

If an employee with five years of credited service dies after January 31, 1977, but prior to the earlier of either the employee's normal retirement age or the employee's actual retirement date or if the employee was receiving a disability allowance that started after January 31, 1977, the surviving spouse of the employee or, if there is no spouse, the custodian or conservator of any surviving children shall be paid the following family benefits:

**CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:18**

(1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to 40 percent of the highest annual earnings earned by the employee during any one of the last three years of credited service, plus 10 percent of those earnings for each child to a maximum of five children;

(2) If there is no surviving spouse, the custodian or conservator of each child shall receive on behalf of each child, to a maximum of five children, an annual amount, payable in monthly installments, equal to 10 percent of the highest annual earnings earned by the employee during any one of the last three years of service. Payments under this subdivision may not total more than 50 percent of those earnings;

(3) If there are more than five children, the benefits payable to children under subdivision (1) or (2) shall be allocated to all children on a share and share alike basis; or

(4) If there are no benefits being paid to the spouse under subdivision (1), the spouse upon reaching age 65 shall receive a monthly payment based on the pension which would have been payable to the deceased employee at normal retirement age based on the employee's credited and projected service and projected compensation actuarially reduced to reflect a 50 percent joint and survivor option. The benefit payable under this subdivision shall be increased by application of the improvement factor for time which elapses between the date the employee would have reached normal retirement age and the date benefits begin to the spouse.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:18. Deduction of other public benefits from family benefits**

All other public benefits payable to a beneficiary shall be deducted from the family benefits provided in § 20:16:17:17.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**20:16:17:18****ADMINISTRATIVE RULES**

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

**20:16:17:19. Election of additional survivor protection option—Beginning and end of additional contribution**

Within 90 days after becoming an employee or marrying or attaining age 35, an employee may elect to provide the employee's spouse with additional survivor protection by making an employee contribution of eight-tenths of one percent of earnings. This contribution shall start with the first payroll period following the date of the election. It shall continue until the earlier of the employee's attaining normal retirement age, employee's spouse attaining age 65, the death or disability of the employee, the death of the spouse, termination of employment, or the termination of the marriage. All funds contributed for the additional survivor protection shall remain with the system and may not be refunded to the employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

**20:16:17:20. Amount of additional survivor protection benefits—Termination**

The additional survivor protection payable under § 20:16:17:19 shall, on the death of the employee or expiration of benefits that may have been paid pursuant to § 20:16:17:17 because there is no eligible child, entitle the surviving spouse to an annual amount, payable in monthly installments, equal to 40 percent of the highest annual earnings earned by the employee during any one of the last three years of credited service multiplied by the improvement factor for each full 12-month period between the earlier of the date of death or disability of the employee and the date the payment of the benefit is due to start. The additional survivor protection allowance shall continue until the spouse dies or attains age 65, whichever is earlier.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:23**

### **20:16:17:21. Normal form of pension benefits**

The normal form of pension benefits is a life annuity, payable monthly, beginning on the employee's retirement date and continuing to the last monthly payment for the month in which the pensioner dies.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:22. Joint and survivor benefit**

In lieu of the pension otherwise payable, an employee entitled to a normal or early retirement pension may elect to receive a smaller monthly pension during the employee's lifetime by electing a 50 percent or 100 percent joint and survivor benefit. After the employee's death the percentage of the reduced benefit elected by the employee shall be continued to the employee's beneficiary, called a "contingent annuitant," during the latter's lifetime. If a 50 percent or 100 percent joint and survivor option is not elected, an automatic 50 percent joint and survivor option shall be made unless an employee and spouse specifically choose not to elect either of the joint and survivor options.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:23. Election of joint and survivor benefit**

To be effective, a joint and survivor option election shall be made by written request filed with the board not less than 12 months prior to the employee's retirement date. If the election is not filed at least 12 months prior to the employee's retirement date, the option may not take effect until after 12 months have elapsed after election, and it shall then be effective for all subsequent months. Any employee reaching retirement before July 1, 1979, shall be granted election options prior to retirement date. Until the option takes effect, the benefit shall be payable in the normal form only, as if the option had not been

**20:16:17:23****ADMINISTRATIVE RULES**

elected. Benefits to be paid may not be retroactively adjudged if the option is put into effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:24. Effective date of joint and survivor benefit**

The joint and survivor option shall take effect only if the pensioner and the pensioner's contingent annuitant are both alive on the date when it is to take effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:25. Revocation of joint and survivor benefit**

Once elected, the joint and survivor option may not be revoked except under the following conditions:

(1) Revocation must be made in writing in a form prescribed by the board and filed with the board before the end of the first calendar month for which a pension benefit has become payable to the pensioner;

(2) Revocation may not become effective until 12 months after it has been filed. Until then any benefits payable shall be paid in the amount determined under the joint and survivor option, without retroactive adjustment of such payments once revocation takes effect;

(3) The option shall be automatically revoked if the contingent annuitant dies. If the contingent annuitant is the employee's spouse and the spouse is divorced from the employee before a pension in the optional form becomes effective, the employee may continue the option if, within 90 days after such an event, the employee chooses another contingent annuitant and communicates it to the board in writing; and

(4) The designation of a contingent annuitant may not be changed after the first pension payment under the option has been made to the pensioner.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:28**

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:26. Limitation of joint and survivor benefit option**

The joint and survivor option may not be paid if payment would result in a monthly pension of less than \$20 to the pensioner or the contingent annuitant.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:27. Credited service**

Credited service under the plan means the last period of continuous employment with the commission prior to termination of employment for the purpose of retirement. Credited service may not exceed 35 years except as otherwise provided in § 20:16:17:07.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 97, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:28. Interruption of continuous employment**

If continuous employment is interrupted for any cause, except as provided in the plan, any credited service accrued for periods of employment prior to the interruption may not be considered, and the employee shall be treated as a new employee in determining credited service. However, continuous employment is not considered interrupted by leaves of absence from regular employment authorized by the commission for:

(1) Disability, except in connection with retirement;

(2) Service in the armed forces of the United States, if the employee returns to employment with the commission within the period of time prescribed by law for the reemployment of veterans; or

**20:16:17:28****ADMINISTRATIVE RULES**

(3) Not more than 12 months for any other cause or reason satisfactory to the commission. During any period of authorized leaves of absence, no service credit may be granted.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:29. Vesting of service credits**

An employee who terminates employment for any reason other than death or early or normal retirement is entitled to a deferred pension if the employee has accumulated at least five years of credited service. The deferred pension shall start on the normal retirement date, or, at the request of the employee, as early as age 62 in accordance with §§ 20:16:17:08 and 20:16:17:09. The deferred pension amount shall be calculated using the benefit formula in effect at the time of the employee's termination with the commission and the years of continuous employment to the date of termination. If this plan is terminated, the accrued benefits of each participant in the plan immediately become 100 percent vested and nonforfeitable.

If an employee becomes a participant in the retirement plan within the five-year period preceding the employee's 65th birthday, the participant's normal retirement date is the first day of the calendar month coincident with or immediately following the participant's fifth anniversary of the plan participation. If a participant's employment with the commission is terminated at or after attainment of the participant's normal retirement date, the participant is vested in and entitled to receive the participant's accrued benefit.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:30. Advance written applications required**

An application for the commencement of pension benefits shall be in writing on a form and in a manner prescribed by the

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:33**

board, and shall be filed with the board in advance of the first month for which benefits are to be paid.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:31. Information required**

An employee, pensioner, or beneficiary shall furnish the board with any information or proof requested by it and reasonably required to administer the plan. Failure on the part of any person to comply with such a request promptly, completely, and in good faith is sufficient grounds for denying benefits to that person. If a pensioner or beneficiary makes a false statement material to any claim for benefits, the person shall be denied all benefits, and the board may recover any payments made in reliance on the false statement.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:32. Payments for incompetents**

If a pensioner or beneficiary is mentally or physically incompetent, payments shall be made to the person who has satisfied the board that he or she is caring for the pensioner or beneficiary. Such payments shall be a complete discharge of the liabilities under this plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:33. Nonalienation of benefits**

No benefit payable at any time under the plan may be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind. An attempt to encumber a benefit in any way is void. A benefit is not subject in any manner to the debts or liabilities of a person to whom the

**20:16:17:33****ADMINISTRATIVE RULES**

benefit is payable. However, the board may make distributions pursuant to a qualified domestic relations order as defined in Internal Revenue Code § 414(p), if the board has notified the employee and any alternative payee of the order and has determined that the order is a qualified domestic relations order.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:34. Terms of employment not affected**

Under no circumstances may an employee's participation in the plan be construed to constitute a contract of continuing employment or in any manner obligate the commission to continue or discontinue the services of an employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:35. Reference to other documents**

A reference in the plan to rights under the plan shall be construed as a reference to rights also under any other instrument, trust agreement, or insurance or annuity contract created or entered into to effect the purposes of the plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:36. Rounding of benefit amounts**

The monthly amount of pension benefits, as computed in accordance with §§ 20:16:17:06 to 20:16:17:21, inclusive, or if an adjustment provided elsewhere is applied, shall be rounded to the next higher whole dollar amount.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:38**

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:37. Improvement factor**

The annual increase in the amount of the benefit allowance for each year commencing on the July first that is at least 12 months following the date on which the benefit was first payable shall be equal to 50 percent of the annual percentage change in the consumer price index for urban wage earners and clerical workers (all U.S. city average) as computed by the Bureau of Labor Statistics of the United States Department of Labor for the prior calendar year, not to exceed a 1.43 percent increase compounded annually.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:17:38. Minimum distribution requirements**

Benefit payments under this plan must begin by the later of April 1 of the calendar year following the year in which the participant reaches age 70½ or retires. The participant's entire interest in the plan shall be distributed over the life of the participant or the lives of the participant and a designated beneficiary over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and the designated beneficiary. If a participant dies after distribution of benefits has begun, the remaining portion of the participant's interest shall be distributed at least as rapidly as under the method of distribution prior to the member's death. If a participant dies before distribution of benefits has begun, the entire interest of the participant shall be distributed within five years after the participant's death. The five-year payment requirement does not apply to any portion of the participant's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within one year after the date of the participant's death. The five-year payment requirement does not apply to any portion of the participant's interest that is payable to a surviving spouse payable over the life or life expectancy of the spouse that begins

**20:16:17:38****ADMINISTRATIVE RULES**

no later than the date the participant would have reached age 70½.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:39. Limitation on benefits**

Benefits for a participant may not exceed the maximum specified under § 415 of the Internal Revenue Code for governmental plans. This section does not constitute an election under § 415(b)(10)(C) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:40. Privatization of the plant**

The plant was privatized on March 16, 2001. Any pensioner or former employee who qualifies to be an inactive vested employee affected by the privatization is entitled to the benefits accrued as of the effective date of the privatization.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:17:41. Amendment and termination of the plan**

The board reserves the right to amend this plan at any time subject to Internal Revenue Code rules regarding accrued benefits of participants. No modification or amendment of the plan may make it possible for any part of the income or assets of the fund to be used for or diverted to purposes other than for the exclusive benefit of the participants and their beneficiaries. Also, no modification or amendment of the plan may reduce benefits to the participants, but benefits may be increased.

The board reserves the right to discontinue this plan in whole or in part. In the event of a termination of the plan, the rights of all affected participants to benefits then accrued shall there-

**CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:17:41**

upon become 100 percent vested and nonforfeitable. The board shall take such steps as it determines necessary or desirable to comply with applicable laws.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

## 1971 GROUP ANNUITY MORTALITY TABLES

Chapter 20:16:17  
APPENDIX A

SEE: § 20:16:17:01(6)

Source: 28 SDR 109, effective February 11, 2002; 40 SDR 197, effective May 27, 2014.

1971 GROUP ANNUITY MORTALITY TABLE  
(Probabilities are given from age 20 to 110)

## FEMALE

20	0.000260	51	0.002324	82	0.067936
21	0.000275	52	0.002520	83	0.074351
22	0.000292	53	0.002738	84	0.081501
23	0.000309	54	0.002982	85	0.089179
24	0.000327	55	0.003256	86	0.097468
25	0.000347	56	0.003574	87	0.106452
26	0.000368	57	0.003948	88	0.116226
27	0.000390	58	0.004388	89	0.126893
28	0.000414	59	0.004901	90	0.138577
29	0.000440	60	0.005489	91	0.151192
30	0.000469	61	0.006156	92	0.165077
31	0.000499	62	0.006898	93	0.180401
32	0.000533	63	0.007712	94	0.197349
33	0.000569	64	0.008608	95	0.206129
34	0.000608	65	0.009563	96	0.236970
35	0.000651	66	0.010565	97	0.258059
36	0.000698	67	0.011621	98	0.280237
37	0.000750	68	0.012877	99	0.304679
38	0.000807	69	0.014461	100	0.331630
39	0.000869	70	0.016477	101	0.361361
40	0.000938	71	0.019000	102	0.394167
41	0.001013	72	0.021911	103	0.430366
42	0.001094	73	0.025112	104	0.471522
43	0.001186	74	0.028632	105	0.519196
44	0.001286	75	0.032385	106	0.574950
45	0.001397	76	0.036408	107	0.640345
46	0.001519	77	0.040769	108	0.716944
47	0.001654	78	0.045472	109	0.806309
48	0.001802	79	0.050616	110	0.999999
49	0.001967	80	0.056085		
50	0.002151	81	0.061853		

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**1971 GROUP ANNUITY MORTALITY TABLE  
(Probabilities are given from age 20 to 110)**

**MALE**

20	0.000530	51	0.005867	82	0.103691
21	0.000522	52	0.006480	83	0.112303
22	0.000544	53	0.007127	84	0.121116
23	0.000566	54	0.007806	85	0.130102
24	0.000591	55	0.008519	86	0.139315
25	0.000617	56	0.009262	87	0.148714
26	0.000650	57	0.010039	88	0.158486
27	0.000684	58	0.010889	89	0.168709
28	0.000722	59	0.011924	90	0.179452
29	0.000763	60	0.013119	91	0.170489
30	0.000809	61	0.014440	92	0.201681
31	0.000860	62	0.015863	93	0.212986
32	0.000916	63	0.017413	94	0.226535
33	0.000978	64	0.017185	95	0.241164
34	0.001046	65	0.021260	96	0.256204
35	0.001122	66	0.023643	97	0.272480
36	0.001204	67	0.026316	98	0.290163
37	0.001295	68	0.029188	99	0.309125
38	0.001397	69	0.032435	100	0.329825
39	0.001509	70	0.036106	101	0.352455
40	0.001633	71	0.040008	102	0.377220
41	0.001789	72	0.043827	103	0.406205
42	0.002000	73	0.047489	104	0.441497
43	0.002260	74	0.051221	105	0.485182
44	0.002569	75	0.055293	106	0.539343
45	0.002922	76	0.060068	107	0.606069
46	0.003318	77	0.065924	108	0.687444
47	0.003754	78	0.072595	109	0.785555
48	0.004228	79	0.079672	110	0.999999
49	0.004740	80	0.087431		
50	0.005285	81	0.095445		

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**CHAPTER 20:16:18  
RETIREMENT PLAN 5A**

**Section**

- 20:16:18:01. Definitions.
- 20:16:18:02. Term of coverage.
- 20:16:18:03. Participation in benefits.
- 20:16:18:04. Contributions by the commission.
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## ADMINISTRATIVE RULES

### Section

- 20:16:18:06. Qualifications for normal pension.
- 20:16:18:07. Amount of the normal pension.
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- 20:16:18:09. Amount of early retirement pension.
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- 20:16:18:26. Limitation of joint and survivor benefit option.
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- 20:16:18:37. Improvement factor.
- 20:16:18:38. Minimum distribution requirements.
- 20:16:18:39. Limitation on benefits.
- 20:16:18:40. Privatization of the plant.
- 20:16:18:41. Amendment and termination of the plan.
- Appendix A. 1971 Group Annuity Mortality Tables.

### **20:16:18:01. Definitions**

Terms used in this chapter mean:

- (1) “Plan,” “pension plan,” the retirement plan set forth in this chapter and any modifications, amendments, extensions, or renewals of it;
- (2) “Collective bargaining agreement,” a written contract between a union and the commission requiring contributions to the plan or setting forth benefits to be provided, including all extensions or renewals and successor agreements of it;

**CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:18:01**

(3) "Employee," a person employed on a full-time basis, including an officer, whose customary employment is for at least 40 hours in a week and 12 months in any calendar year and on a continuous basis;

(4) "Pensioner," an employee who is retired and who is receiving benefits under the plan;

(5) "Credited service," periods of employment for purposes of determining eligibility for benefits under the plan, as set forth in §§ 20:16:18:27 to 20:16:18:29, inclusive;

(6) "Actuarial equivalent," a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of the 1971 Group Annuity Mortality Table, as published in Appendix A at the end of this chapter, at 7.5 percent interest;

(7) "Beneficiary," the person, estate, or trust designated by the employee or pensioner to receive any benefit payments after the death of the employee or pensioner;

(8) "Earnings," compensation paid to an employee by the commission including base pay, the employee's elective contributions to deferred compensation plans, other deferred compensation, any short term and long term bonuses based on compensation and discretionary bonuses, but excluding any premium pay, overtime pay, higher pay rates for temporary job assignments, lump sum annual leave payment, sick leave retirement bonus payment, severance payment or other compensation not specifically stated as being covered compensation for the retirement calculation;

(9) "Hourly conversion rate," for the purpose of converting an hourly rate to a monthly rate four and one-third weeks a month at 40 hours a week is used;

(10) "Final average earnings," the average of an employee's highest consecutive 36 calendar months of earnings in the last 72 calendar months of this credited service immediately preceding the earlier of the calendar month in which the employee's retirement date occurs;

(11) "Effective date," July 1, 1999;

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(12) “Retirement date,” the date an employee actually retires under the applicable provisions of the plan;

(13) “Normal retirement date,” the first day of the calendar month coincident with or next following the employee’s 65th birthday;

(14) “Fund,” the fund created pursuant to SDCL chapter 3–12;

(15) “Totally disabled,” a disability that prevents the employee from performing duties and entitles the employee to receive a federal Social Security Act disability benefit;

(16) “Child or children,” any employee’s unmarried dependent child who is under 19 years of age; any unmarried dependent child under 23 years of age who is a full-time student; any unmarried dependent child who is totally or permanently disabled, either physically or mentally, regardless of the child’s age, if the disability occurred before age 19; any stepchild or foster child who depends on the employee for support and lives in the household of the employee in a regular parent-child relationship; or any child of the employee conceived during the employee’s lifetime and born after the employee’s death; and

(17) “Other public benefits,” the benefits provided by the federal Social Security Act, the federal civil service retirement program, federal military, disability, railroad retirement plans, workers’ compensation, or any other public retirement system.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

**20:16:18:02. Term of coverage**

Retirement Plan 5A covers any employee who retired from employment or terminated employment and who qualifies to be an inactive vested employee with the commission from July 1, 1999, to April 30, 2000, inclusive.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:03. Participation in benefits**

Any employee is eligible to participate in the pension plan. However, no person specifically employed as a temporary employee is eligible to participate in this plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:04. Contributions by the commission**

Repealed.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; repealed, 40 SDR 197, effective May 27, 2014.

### **20:16:18:05. Forfeiture**

Any amount which is forfeited by an employee pursuant to any of the provisions of the plan shall remain in the fund.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:06. Qualifications for normal pension**

A retiring employee is entitled to a normal pension if the employee meets all of the following requirements:

- (1) Has attained the age of 65;
- (2) Has accumulated at least three years of credited service; and
- (3) Retires from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:07****ADMINISTRATIVE RULES****20:16:18:07. Amount of the normal pension**

The normal pension amount for any employee who retires after June 30, 1999, shall be the sum of:

- (1) 1.55 percent of final average earnings times all years of credited service prior to July 1, 2000; and
- (2) 1.3 percent of final average earnings times all years of credited service after June 30, 2000.

The amount of earnings under the plan may not exceed the limit on compensation allowed under § 401(a)(17) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:08. Qualifications for early retirement pension**

An employee or former employee is entitled to an early retirement pension if the employee meets all the following requirements:

- (1) Has attained the age of 62 but has not yet attained age 65;
- (2) Has accumulated at least three years of credited service; and
- (3) Has terminated from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:09. Amount of early retirement pension**

The amount of the early retirement pension shall be determined by calculating the amount of the normal pension to which the employee would be entitled if the employee were age 65 on the effective date of the employee's early retirement pension times the appropriate percentage from the table below:

## CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:18:11

Years of Credited Service	Age 62	Age 63	Age 64	Age 65
Less than 26	91%	94%	97%	100%
26	94%	97%	100%	100%
27	97%	100%	100%	100%
28 and over	100%	100%	100%	100%

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### 20:16:18:10. Disability pension

An employee is entitled to a disability pension if the employee meets all the following requirements:

- (1) Has become totally disabled on or after the date this plan became effective;
- (2) Has completed at least three years of credited service;
- (3) Retires from active employment with the commission;  
and
- (4) Has been approved for and receives a disability benefit under the federal Social Security Act.

The last day of active employment shall coincide with or follow the date Social Security designates as the first day of total disability. If the last day of active employment was before the date Social Security designates as the first day of total disability, the terminated employee is not eligible for a disability pension.

The board may, at any time, require evidence of continued entitlement to a disability benefit.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### 20:16:18:11. Amount of the disability pension

The disability pension shall be equal to 50 percent of the highest annual earnings earned in any one of the three years

**20:16:18:11****ADMINISTRATIVE RULES**

immediately preceding the date of disability, increased by 10 percent of those earnings for each eligible child to a maximum of four children. The disability allowance shall be paid only in the form of monthly installments.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:12. Disability pension payments**

Payment of the disability pension shall begin five months after the month in which the disability occurs and shall continue thereafter for as long as the pensioner remains totally disabled. Upon attainment of age 65, a pensioner shall have benefits continued under § 20:16:18:16 regardless of whether or not the pensioner remains totally disabled.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:13. Deduction of other public benefits from disability pension**

A disability pension shall be reduced by an amount equal to the other public benefits paid or payable. A disability pension payable on account of children shall be reduced when children become ineligible dependents.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:14. Reduction of disability pension of earnings in employment**

If a person receiving a disability pension is employed or is self-employed in any capacity, the disability pension shall be reduced by 50 cents for each dollar earned through such employment. Earned income shall be determined in accordance

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with the definition as established by Internal Revenue Code § 32(c)(2).

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:15. Reemployment of a disabled pensioner**

A pensioner who is no longer entitled to a disability benefit may be entitled to a normal or early pension unaffected by the prior receipt of a disability pension.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:16. Conversion of disability pension to normal retirement pension at retirement age**

When a person who is receiving a disability pension reaches normal retirement age, or at a later date if there are no eligible children, the person's disability pension shall be terminated. Thereafter the person shall receive the pension payable for normal retirement at that age, calculated on the credited service the person would have accrued to age 65 and earnings projected at two percent per calendar year not compounded. The earnings will be increased each January 1 starting with the first January subsequent to the date of disability. In no event, however, may the recomputed pension be greater than the disability pension payable to the employee without eligible children under this provision.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:17. Family benefits payable on death of employee before retirement**

If an employee with three years of credited service dies after June 30, 1999, but prior to the earlier of either the employee's

normal retirement age or the employee's actual retirement date or if the employee was receiving a disability pension which started after June 30, 1999, a family benefit shall be paid as follows:

(1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to 40 percent of the highest annual earnings earned by the employee during any one of the last three years of credited service;

(2) The custodian or conservator of each child shall receive on behalf of each child, to a maximum of five children, an annual amount, payable in monthly installments, equal to 10 percent of the highest annual earnings earned by the employee during any one of the last three years of service. Payments under this subdivision may not total more than 50 percent of those earnings;

(3) If there are more than five children, the benefits payable to children under subdivision (1) or (2) shall be allocated to all children on a share and share alike basis; or

(4) If there are no benefits being paid to the spouse under subdivision (1), the spouse upon reaching age 65 shall receive a monthly payment based on the pension which would have been payable to the deceased employee at the employee's normal retirement age. The amount of this monthly payment shall be based on the employee's credited and projected service and projected compensation calculated using the credited service the deceased employee would have accrued to aged 65 and earnings projected at two percent per calendar year not compounded. These earnings would be increased each January 1 starting with the first January subsequent to the date of disability. This amount shall be actuarially reduced to reflect a 50 percent joint and survivor option. The benefit payable under this subdivision shall be increased by application of the improvement factor for time which elapses between the date the employee would have reached normal retirement age and the date benefits begin to the spouse.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:18. Deduction of Social Security benefits from family benefits**

The initial Social Security benefits payable to a beneficiary shall be deducted from the family benefits provided in § 20:16:18:17. Any future increase in Social Security benefits does not apply to this section.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:19. Election of additional survivor protection option—Beginning and end of additional contribution**

Within 90 days after becoming an employee or marrying or attaining age 35, or after June 30, 1999, and before October 1, 1999, an employee may elect to provide the employee's spouse with additional survivor protection by making an employee contribution of 8/10 of one percent of earnings. This contribution shall start with the first payroll period following the date of the election. It shall continue until the earlier of the employee's retirement, employee's spouse attaining age 65, the death or disability of the employee, the death of the spouse, termination of employment, or the termination of the marriage. Any funds contributed for the additional survivor protection shall remain with the system and may not be refunded to the employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:20. Amount of additional survivor protection benefits—Termination**

The additional survivor protection payable under § 20:16:18:19 shall, on the death of the employee or expiration of benefits that may have been paid pursuant to § 20:16:18:17

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because there is no eligible child, entitle the surviving spouse to an annual amount, payable in monthly installments, equal to 40 percent of the highest annual earnings earned by the employee during any one of the last three years of credited service multiplied by the improvement factor for each full 12-month period between the earlier of the date of death or disability of the employee and the date the payment of the benefit is due to start. The additional survivor protection benefit shall continue until the spouse dies or attains age 65, whichever is earlier.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:21. Normal form of pension benefits**

The normal form of pension benefits is a life annuity, payable monthly, beginning on the employee's retirement date and continuing to the last monthly payment for the month in which the pensioner dies.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:22. Joint and survivor benefit**

In lieu of the pension otherwise payable, an employee entitled to a normal or early retirement pension may elect to receive a smaller monthly pension during the employee's lifetime by electing a 50 percent or 100 percent joint and survivor benefit. After the employee's death, the percentage of the reduced benefit elected by the employee shall be continued to the employee's beneficiary, called a "contingent annuitant," during the latter's lifetime. If a 50 percent or 100 percent joint and survivor option is not elected, an automatic 50 percent joint and survivor option shall be made unless an employee and spouse specifically choose not to elect either of the joint and survivor options.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

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**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:23. Election of joint and survivor benefit**

To be effective, a joint and survivor option election shall be made by written request filed with the board not less than 12 full calendar months prior to the employee's retirement date. If the election is not filed at least 12 full calendar months prior to the employee's retirement date, the option may not take effect until after 12 full calendar months have elapsed after election, and it shall then be effective for all subsequent months. Until the option takes effect, the benefit shall be payable in the normal form only, as if the option had not been elected. Benefits to be paid may not be retroactively adjudged if the option is put into effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:24. Effective date of joint and survivor benefit**

The joint and survivor option shall take effect only if the pensioner and the pensioner's contingent annuitant are both alive on the date when it is to take effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:25. Revocation of joint and survivor benefit**

Once elected, the joint and survivor option may not be revoked except under the following conditions:

(1) Revocation shall be made in writing in a form prescribed by the board and filed with the board before the end of the first calendar month for which an optional pension benefit has become payable to the pensioner;

(2) Revocation may not become effective until 12 months after it has been filed. Until then any benefits payable shall be paid in the amount determined under the joint and survivor

**20:16:18:25****ADMINISTRATIVE RULES**

option, without retroactive adjustment of such payments once revocation takes effect;

(3) The option shall be automatically revoked if the contingent annuitant dies. If the contingent annuitant is the employee's spouse and the spouse is divorced from the employee before a pension in the optional form becomes effective, the employee may continue the option if, within 90 days after such an event, the employee chooses another contingent annuitant and communicates it to the board in writing; and

(4) The designation of a contingent annuitant may not be changed after the first pension payment under the option has been made to the pensioner.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:26. Limitation of joint and survivor benefit option**

The joint and survivor option may not be paid if payment would result in a monthly pension of less than \$20 to the pensioner or the contingent annuitant.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:27. Credited service**

Credited service under the plan means the last period of continuous employment as a full-time employee with the commission prior to termination of employment for the purpose of retirement. However, if a temporary employee moves from temporary to a full-time status without a break in service, the employee's credited service shall include the period of temporary employment.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

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### **20:16:18:28. Interruption of continuous employment**

If continuous employment is interrupted for any cause, except as provided in the plan, any credited service accrued for periods of employment prior to the interruption may not be considered, and the employee shall be treated as a new employee in determining credited service. However, continuous employment is not considered interrupted by leaves of absence from regular employment authorized by the commission for:

- (1) Disability, except in connection with retirement;
- (2) Service in the armed forces of the United States, if the employee returns to employment with the commission within the period of time prescribed by law for the reemployment of veterans; or
- (3) Not more than 12 months for any other cause or reason satisfactory to the commission.

No service credit may be granted during any period of authorized leave of absence.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:29. Vesting of service credits**

An employee who terminates employment for any reason other than death or early or normal retirement is entitled to a deferred pension if the employee has accumulated at least three years of credited service. The deferred pension shall start on the normal retirement date, or, at the request of the employee, as early as age 62 in accordance with §§ 20:16:18:08 and 20:16:18:09. The deferred pension amount shall be calculated using the benefit formula in effect at the time of the employee's termination with the commission and the years of continuous employment to the date of termination. If this plan is terminated, the accrued benefits of each participant in the plan immediately become 100 percent vested and nonforfeitable. If an employee becomes a participant in the retirement plan within the three-year period preceding the employee's 65th birthday,

**20:16:18:29****ADMINISTRATIVE RULES**

the participant's normal retirement date is the first day of the calendar month coincident with or immediately following the participant's third anniversary of the plan participation. If a participant's employment with the commission is terminated at or after attainment of the participant's normal retirement date, the participant is vested in and entitled to receive the participant's accrued benefit.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:30. Advance written applications required**

An application for the commencement of pension benefits shall be in writing on a form and in a manner prescribed by the board, and shall be filed with the board in advance of the first month for which benefits are to be paid.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:31. Information required**

An employee, pensioner, or beneficiary shall furnish the board with any information or proof requested by it and reasonably required to administer the plan. Failure on the part of any person to comply with such a request promptly, completely, and in good faith is sufficient grounds for denying benefits to that person. If a pensioner or beneficiary makes a false statement material to any claim for benefits, the person shall be denied all benefits, and the board may recover any payments made in reliance on the false statement.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:32. Payments for incompetents**

If a pensioner or beneficiary is mentally or physically incompetent, payments shall be made to any person who has satisfied

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the board that he or she is caring for the pensioner or beneficiary. Such payments shall be a complete discharge of the liabilities under this plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:33. Nonalienation of benefits**

No benefit payable at any time under the plan may be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind. An attempt to encumber a benefit in any way is void. A benefit is not subject in any manner to the debts or liabilities of a person to whom the benefit is payable. However, the board may make distributions pursuant to a qualified domestic relations order as defined in Internal Revenue Code § 414(p), if the board has notified the employee and any alternate payee of the order and has determined that the order is a qualified domestic relations order.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:34. Terms of employment not affected**

Under no circumstances may an employee's participation in the plan be construed to constitute a contract of continuing employment or in any manner obligate the commission to continue or discontinue the services of an employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:35. Reference to other documents**

Any reference in the plan to rights under the plan shall be construed as a reference to rights also under any other instrument, trust agreement, or insurance or annuity contract created or entered into to effect the purposes of the plan.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:36. Rounding of benefit amounts**

The monthly amount of pension benefits, as computed in accordance with §§ 20:16:18:07 to 20:16:18:22, inclusive, or if an adjustment provided elsewhere is applied, shall be rounded to the next higher whole dollar amount.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:37. Improvement factor**

The annual increase in the amount of the benefit allowance for each year commencing on the July first that is at least 12 months following the date on which the benefit was first payable shall be 3.1 percent, compounded annually. This annual increase, effective July 1, 1999, applies to all employees who retire after June 30, 1999, or who terminate employment after June 30, 1999, for any reason other than early or normal retirement after three years of credited service. The improvement factor shall commence on the July first that is at least 12 full calendar months following the date of termination. No individual may be required to incur another improvement factor waiting period when changing from one type of benefit to another type of benefit. Once the original waiting period has applied, future benefits shall automatically increase each July 1 thereafter.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:38. Minimum distribution requirements**

Benefit payments under this plan shall begin by the later of April 1 of the calendar year following the year in which the participant reaches age 70½ or retires. The participant's entire

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interest in the plan shall be distributed over the life of the participant or the lives of the participant and a designated beneficiary over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and the designated beneficiary. If a participant dies after distribution of benefits has begun, the remaining portion of the participant's interest shall be distributed at least as rapidly as under the method of distribution prior to the member's death. If a participant dies before distribution of benefits has begun, the entire interest of the participant shall be distributed within five years after the participant's death. The five-year payment requirement does not apply to any portion of the participant's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within one year after the date of the participant's death. The five-year payment requirement does not apply to any portion of the participant's interest that is payable to a surviving spouse payable over the life or life expectancy of the spouse that begins no later than the date the participant would have reached age 70½.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:39. Limitation on benefits**

Benefits for a participant may not exceed the maximum specified under § 415 of the Internal Revenue Code for governmental plans. This section does not constitute an election under § 415(b)(10)(C) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:18:40. Privatization of the plant**

The plant was privatized on March 16, 2001. Any pensioner or former employee who qualifies to be an inactive vested employee affected by the privatization is entitled to the benefits accrued as of the effective date of the privatization.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:18:41. Amendment and termination of the plan**

The board reserves the right to amend this plan at any time subject to Internal Revenue Code rules regarding accrued benefits of participants. No modification or amendment of the plan may make it possible for any part of the income or assets of the fund to be used for or diverted to purposes other than for the exclusive benefit of the participants and their beneficiaries. Also, no modification or amendment of the plan may reduce benefits to the participants, but benefits may be increased.

The board reserves the right to discontinue this plan in whole or in part. In the event of a termination of the plan, the rights of all affected participants to benefits then accrued shall thereupon become 100 percent vested and nonforfeitable. The board shall take such steps as it determines necessary or desirable to comply with applicable laws.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

## 1971 GROUP ANNUITY MORTALITY TABLES

Chapter 20:16:18  
APPENDIX A

SEE: § 20:16:18:01(6)

Source: 28 SDR 109, effective February 11, 2002; 40 SDR 197, effective May 27, 2014.

1971 GROUP ANNUITY MORTALITY TABLE  
(Probabilities are given from age 20 to 110)

## FEMALE

20	0.000260	51	0.002324	82	0.067936
21	0.000275	52	0.002520	83	0.074351
22	0.000292	53	0.002738	84	0.081501
23	0.000309	54	0.002982	85	0.089179
24	0.000327	55	0.003256	86	0.097468
25	0.000347	56	0.003574	87	0.106452
26	0.000368	57	0.003948	88	0.116226
27	0.000390	58	0.004388	89	0.126893
28	0.000414	59	0.004901	90	0.138577
29	0.000440	60	0.005489	91	0.151192
30	0.000469	61	0.006156	92	0.165077
31	0.000499	62	0.006898	93	0.180401
32	0.000533	63	0.007712	94	0.197349
33	0.000569	64	0.008608	95	0.206129
34	0.000608	65	0.009563	96	0.236970
35	0.000651	66	0.010565	97	0.258059
36	0.000698	67	0.011621	98	0.280237
37	0.000750	68	0.012877	99	0.304679
38	0.000807	69	0.014461	100	0.331630
39	0.000869	70	0.016477	101	0.361361
40	0.000938	71	0.019000	102	0.394167
41	0.001013	72	0.021911	103	0.430366
42	0.001094	73	0.025112	104	0.471522
43	0.001186	74	0.028632	105	0.519196
44	0.001286	75	0.032385	106	0.574950
45	0.001397	76	0.036408	107	0.640345
46	0.001519	77	0.040769	108	0.716944
47	0.001654	78	0.045472	109	0.806309
48	0.001802	79	0.050616	110	0.999999
49	0.001967	80	0.056085		
50	0.002151	81	0.061853		

**1971 GROUP ANNUITY MORTALITY TABLE**  
**(Probabilities are given from age 20 to 110)**

**MALE**

20	0.000530	51	0.005867	82	0.103691
21	0.000522	52	0.006480	83	0.112303
22	0.000544	53	0.007127	84	0.121116
23	0.000566	54	0.007806	85	0.130102
24	0.000591	55	0.008519	86	0.139315
25	0.000617	56	0.009262	87	0.148714
26	0.000650	57	0.010039	88	0.158486
27	0.000684	58	0.010889	89	0.168709
28	0.000722	59	0.011924	90	0.179452
29	0.000763	60	0.013119	91	0.170489
30	0.000809	61	0.014440	92	0.201681
31	0.000860	62	0.015863	93	0.212986
32	0.000916	63	0.017413	94	0.226535
33	0.000978	64	0.017185	95	0.241164
34	0.001046	65	0.021260	96	0.256204
35	0.001122	66	0.023643	97	0.272480
36	0.001204	67	0.026316	98	0.290163
37	0.001295	68	0.029188	99	0.309125
38	0.001397	69	0.032435	100	0.329825
39	0.001509	70	0.036106	101	0.352455
40	0.001633	71	0.040008	102	0.377220
41	0.001789	72	0.043827	103	0.406205
42	0.002000	73	0.047489	104	0.441497
43	0.002260	74	0.051221	105	0.485182
44	0.002569	75	0.055293	106	0.539343
45	0.002922	76	0.060068	107	0.606069
46	0.003318	77	0.065924	108	0.687444
47	0.003754	78	0.072595	109	0.785555
48	0.004228	79	0.079672	110	0.999999
49	0.004740	80	0.087431		
50	0.005285	81	0.095445		

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**CHAPTER 20:16:19**  
**RETIREMENT PLAN 6**

**Section**

- 20:16:19:01. Definitions.
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- 20:16:19:03. Participation in benefits.
- 20:16:19:04. Contributions by the commission.
- 20:16:19:05. Forfeiture.

## CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:19:01

### Section

- 20:16:19:06. Qualifications for normal pension.
- 20:16:19:07. Amount of the normal pension.
- 20:16:19:08. Qualifications for early retirement pension.
- 20:16:19:09. Amount of the early retirement pension.
- 20:16:19:10. Disability pension.
- 20:16:19:11. Amount of the disability pension.
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- 20:16:19:13. Deduction of other public benefits from disability pension.
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- 20:16:19:15. Reemployment of a disability pensioner.
- 20:16:19:16. Conversion of disability pension to normal retirement pension at retirement age.
- 20:16:19:17. Family benefits payable on death of employee before retirement.
- 20:16:19:18. Deduction of Social Security benefits from family benefits.
- 20:16:19:19. Election of additional survivor protection option.
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- 20:16:19:21. Normal form of pension benefit.
- 20:16:19:22. Joint and survivor benefit.
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- 20:16:19:26. Limitation of joint and survivor benefit option.
- 20:16:19:27. Credited service.
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- 20:16:19:38. Rounding of benefit amounts.
- 20:16:19:39. Improvement factor.
- 20:16:19:40. Minimum distribution requirements.
- 20:16:19:41. Limitation on benefits.
- 20:16:19:42. Amendment and termination of the plan.
- 20:16:19:43. Reversion of funds.
- Appendix A. 1971 Group Annuity Mortality Tables.

### 20:16:19:01. Definitions

Terms used in this chapter mean:

- (1) “Plan,” “pension plan,” the retirement plan set forth in this chapter and any modifications, amendments, extensions, or renewals of it;
- (2) “Collective bargaining agreement,” a written contract between a union and the commission requiring contributions to the plan or setting forth benefits to be provided, including all extensions or renewals and successor agreements of it;

(3) “Employee,” a person employed on a full time basis, including an officer, whose customary employment is for at least 40 hours in a week and 12 months in any calendar year and on a continuous basis;

(4) “Pensioner,” an employee who is retired and who is receiving benefits under the plan;

(5) “Credited service,” period of employment for purposes of determining eligibility for benefits under the plan, as set forth in §§ 20:16:19:27 to 20:16:19:31, inclusive;

(6) “Actuarial equivalent,” a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of the 1971 Group Annuity Mortality Table, as published in Appendix A at the end of this chapter, at 7.5 percent interest;

(7) “Beneficiary,” any person, estate, or trust designated by the employee or pensioner to receive any benefit payments after the death of the employee or pensioner;

(8) “Earnings,” compensation paid to an employee by the commission including base pay, the employee’s elective contributions to deferred compensation plans, other deferred compensation, any short term and long term bonuses based on compensation and discretionary bonuses, but excluding any premium pay, overtime pay, higher pay rates for temporary job assignments, lump sum annual leave payment, sick leave retirement bonus payment, severance payment, or other compensation not specifically stated as being covered compensation for the retirement calculation;

(9) “Hourly conversion rate,” for the purpose of converting an hourly rate to a monthly rate four and one-third weeks a month at 40 hours a week is used;

(10) “Final average earnings,” the average of an employee’s highest consecutive 36 calendar months of earnings in the last 72 calendar months of the credited service immediately preceding employee’s retirement date. The month in which the employee retires may be used as a full calendar month, if it is advantageous for the employee, even though it

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may only be a portion of a month because the employee's retirement date falls before the end of the month;

(11) "Effective date," May 1, 2000;

(12) "Retirement date," the date an employee actually retires under the applicable provisions of the plan;

(13) "Normal retirement date," the first day of the calendar month coincident with or next following the employee's 65th birthday;

(14) "Fund," the fund created pursuant to SDCL chapter 3-12;

(15) "Totally disabled," a disability that prevents the employee from performing duties and entitles the employee to receive a federal Social Security Act disability benefit;

(16) "Child or children," any employee's unmarried dependent child who is under 19 years of age; any unmarried dependent child under 23 years of age who is a full-time student; any unmarried dependent child who is totally or permanently disabled, either physically or mentally, regardless of the child's age, if the disability occurred before age 19; any stepchild or foster child who depends on the employee for support and lives in the household of the employee, both of which shall have occurred prior to March 17, 2001, in a regular parent-child relationship; or any child of the employee conceived during the employee's lifetime and born after the employee's death, but for a child to be considered a dependent, the child shall have been born prior to March 17, 2001; and

(17) "Other public benefits," the benefits by the federal Social Security Act, the federal civil service retirement program, federal military, disability, railroad retirement plans, workers' compensation, or any other public retirement system.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

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### **20:16:19:02. Term of coverage**

The plan covers any employee who retires, dies, or becomes disabled after April 30, 2000, and any benefit payable under the plan became 100 percent vested and nonforfeitable on March 16, 2001, the date when the plant was privatized. Any employee on March 16, 2001, is eligible for all benefits payable under the plan the same as if the employee was still an active employee, even if the employee dies subsequent to March 16, 2001, but before the employee retires. Benefits for any person who is not an employee after April 30, 2000, shall be determined under the provisions of the retirement plan that existed at the time of the person's employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**Cross-References:** Disability pension, § 20:16:19:10; Privatization of the plant—Effect on benefits, § 20:16:19:28.

### **20:16:19:03. Participation in benefits**

Any employee is eligible to participate in the pension plan. However, no person specifically employed as a temporary employee is eligible to participate in the plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:04. Contributions by the commission**

Repealed.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; repealed, 40 SDR 197, effective May 27, 2014.

### **20:16:19:05. Forfeiture**

Any amount that is forfeited by an employee pursuant to any of the provisions of the plan shall remain in the fund.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

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**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:06. Qualifications for normal pension**

A retiring employee is entitled to a normal pension if the employee meets all of the following requirements:

- (1) Has attained the age of 65;
- (2) Has accumulated at least three years of credited service; and
- (3) Retires from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:07. Amount of the normal pension**

The normal pension amount for any employee who retires after April 30, 2000, shall be:

- (1) 1.625 percent of final average earnings times all years of credited service prior to March 17, 2001; or
- (2) 2.325 percent of final average earnings times all years of credited service prior to March 17, 2001, less 80 percent of the primary Social Security benefits that would be provided as of March 16, 2001, under federal Social Security.

The amount of earnings under the plan may not exceed the limit on compensation allowed under § 401(a)(17) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:08. Qualifications for early retirement pension**

An employee or former employee is entitled to an early retirement pension if the employee or former employee meets all of the following requirements:

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- (1) Has attained the age of 55 but has not yet attained age 65;
- (2) Has accumulated at least three years of credited service; and
- (3) Has terminated from active employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**Cross-Reference:** Privatization of the plant—Effect on benefits, § 20:16:19:28.

**20:16:19:09. Amount of the early retirement pension**

The amount of the early retirement pension shall be determined by calculating the amount of the normal pension to which the employee would be entitled if the employee were age 65 on the effective date of the employee's early retirement pension times the appropriate percentage or pro rated percentage from the table below:

Years of Credited Service	Age 55	Age 56	Age 57	Age 58	Age 59	Age 60	Age 61	Age 62	Age 63	Age 64	Age 65
Less than 21	70%	73%	76%	79%	82%	85%	88%	91%	94%	97%	100%
21	73%	76%	79%	82%	85%	88%	91%	94%	97%	100%	100%
22	76%	79%	82%	85%	88%	91%	94%	97%	100%	100%	100%
23	79%	82%	85%	88%	91%	94%	97%	100%	100%	100%	100%
24	82%	85%	88%	91%	94%	97%	100%	100%	100%	100%	100%
25	85%	88%	91%	94%	97%	100%	100%	100%	100%	100%	100%
26	88%	91%	94%	97%	100%	100%	100%	100%	100%	100%	100%
27	91%	94%	97%	100%	100%	100%	100%	100%	100%	100%	100%
28	94%	97%	100%	100%	100%	100%	100%	100%	100%	100%	100%
29	97%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
30	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 2010, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**Cross-Reference:** Privatization of the plant—Effect on benefits, § 20:16:19:28.

**20:16:19:10. Disability pension**

An employee is entitled to a disability pension if the employee meets all the following requirements and the employee was disabled prior to March 17, 2001, but after April 30, 2000:

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- (1) Has become totally disabled on or after the date this plan became effective;
- (2) Has completed at least three years of credited service;
- (3) Retires from active employment with the commission; and
- (4) Has been approved for and receives a disability benefit under the federal Social Security Act.

The last day of active employment shall coincide with or follow the date Social Security designates as the first day of total disability. If the last day of active employment was before the date Social Security designates as the first day of total disability, the terminated employee is not eligible for a disability pension.

The board may, at any time, require evidence of continued entitlement to a disability benefit.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:11. Amount of the disability pension**

The disability pension shall be equal to 50 percent of the 12 consecutive months out of the last 36 consecutive months prior to the month of disability, increased by 10 percent of those earnings for each eligible child to a maximum of four children. The disability allowance shall be paid only in the form of monthly installments.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:12. Disability pension payments**

Payment of the disability pension shall begin five months after the month in which the disability occurs and shall continue thereafter for as long as the pensioner remains totally disabled. Upon attainment of age 65, a pensioner shall have

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benefits continued under § 20:16:19:16 regardless of whether or not the pensioner remains totally disabled.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:13. Deduction of other public benefits from disability pension**

The initial Social Security benefit or other public benefit payable to the pensioner shall be deducted from the disability pension provided in § 20:16:19:11. Any future increase in Social Security benefits for the pensioner does not apply to this section. A disability pension payable on account of children shall be reduced when children become ineligible dependents.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 297, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:14. Reduction of disability pension of earnings in employment**

If a person receiving a disability pension is employed or is self-employed in any capacity, the disability pension shall be reduced by 50 cents for each dollar earned through such employment. Earned income shall be determined in accordance with the definition as established by § 32(c)(2) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:15. Reemployment of a disabled pensioner**

A pensioner who is no longer entitled to a disability benefit may be entitled to a normal or early pension unaffected by the prior receipt of a disability pension.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

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**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:16. Conversion of disability pension to normal retirement pension at retirement age**

When a person who is receiving a disability pension reaches normal retirement age, or at a later date if there are no eligible children, the person's disability pension shall be terminated. Thereafter the person shall receive the pension payable for normal retirement at that age, calculated on the credited service the person would have accrued to age 65 and earnings projected at two percent per calendar year not compounded. The earnings will be increased each January 1 starting with the first January subsequent to the date of disability. In no event, however, may the recomputed pension be greater than the disability pension payable to the employee without eligible children under this provision.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:17. Family benefits payable on death of employee before retirement**

If an employee with three years of credited service dies after April 30, 2000, but prior to the earlier of either the employee's normal retirement age or the employee's actual retirement date or if the employee was receiving a disability pension which started after April 30, 2000, a family benefit shall be paid as follows:

(1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to 40 percent of the highest annual earnings earned by the employee during any one of the last three years of credited service;

(2) The custodian or conservator of each child shall receive on behalf of each child, to a maximum of five children, an annual amount, payable in monthly installments, equal to 10 percent of the highest annual earnings earned by the employ-

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ee during any one of the last three years of service. Payments under this subdivision may not total more than 50 percent of those earnings;

(3) If there are more than five children, the benefits payable to children under subdivision (1) or (2) shall be allocated to all children on a share and share alike basis; or

(4) If there are no benefits being paid to the spouse under subdivision (1), the spouse upon reaching age 65 shall receive a monthly payment based on the pension which would have been payable to the deceased employee at the employee's normal retirement age, equal to 60 percent of the pension benefit that the deceased employee would have been eligible to receive at the time of the employee's death. Any employee on March 16, 2001, is eligible for the benefits payable under this section, if the employee has at least three years of credited service at death, including any years of continuous service with any successor employer. If an employee terminates employment with the successor employer for any reason other than death, the employee is not eligible for a benefit under this section. However, the spouse is eligible for a benefit under § 20:16:19:22 when the spouse reaches age 65 if the employee dies before retirement. The family benefit payable under subdivision (1) and (2) shall be based on the employee's compensation at plan termination.

All benefits payable under this subdivision shall be increased by application of the improvement factor from § 20:16:19:39 commencing on the July first that is at least 12 full calendar months following the date of termination of employment with the commission.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:18. Deduction of Social Security benefits from family benefits**

The initial Social Security benefits payable to a beneficiary shall be deducted from the family benefits provided in

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§ 20:16:19:17. Any future increase in Social Security benefits does not apply to this section.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:19. Election of additional survivor protection option**

Within 90 days after becoming an employee or marrying or attaining age 35 an employee may elect to provide the employee's spouse with additional survivor protection by making an employee contribution of 8/10 of one percent of earnings. This contribution shall start with the first payroll period following the date of the election. It shall continue until the earlier of the employee's retirement, employee's spouse attaining age 65, the death or disability of the employee, the death of the spouse, termination of employment, termination of the marriage, or March 16, 2001. Any funds contributed for the additional survivor protection shall remain with the system and may not be refunded to the employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:20. Amount of additional survivor protection benefits**

The additional survivor protection payable under § 20:16:19:19 shall, on the death of the employee or expiration of benefits that may have been paid pursuant to § 20:16:19:17 because there is no eligible child, entitle the surviving spouse to an annual amount, payable in monthly installments, equal to 40 percent of the highest annual earnings earned by the employee during any one of the last three years of credited service multiplied by the improvement factor from § 20:16:19:39 commencing on the July first that is at least 12 full calendar months following the date of termination of employment with the commission. The additional survivor protection benefit continues until the spouse dies, becomes eligible for a benefit under § 20:16:19:22, or attains age 65, whichever is earlier. If the spouse is not already eligible for a benefit under § 20:16:19:22,

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the spouse becomes eligible for a benefit as stated in § 20:16:19:22 when the spouse attains the age 65.

Any employee who participated in the § 20:16:19:19 benefit on March 16, 2001, is eligible for the benefits payable under this section. If an employee terminates employment with any successor employer for any reason other than death, the employee is not eligible for a benefit under this section. However, the spouse is eligible for a benefit under § 20:16:19:22 when the spouse reaches age 65 if the employee dies before retirement.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:21. Normal form of pension benefits**

The normal form of pension benefits is a life annuity, payable monthly, beginning on the employee's retirement date and continuing to the last monthly payment for the month in which the pensioner dies.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:22. Joint and survivor benefit**

Upon the death of any pensioner, any employee, or former employee who has reached normal retirement age, the surviving spouse is eligible to receive a normal pension benefit, payable in monthly installments, equal to 60 percent of the pension benefit that the pensioner, employee, or former employee was receiving or was eligible to receive at the time of death. In lieu of the 60 percent pension benefit, an employee or former employee entitled to a normal or early pension benefit may elect to receive a smaller monthly pension during the pensioner's lifetime by electing a 100 percent joint and survivor benefit. After the employee's or former employee's death, the reduced benefit elected by the employee or former employee shall be continued to the employee's or former employee's

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beneficiary, called a “contingent annuitant,” during the latter’s lifetime.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

**Cross-Reference:** Family benefits payable on death of employee before retirement, § 20:16:19:17.

### **20:16:19:23. Election of joint and survivor benefit**

To be effective, the 100 percent joint and survivor option election shall be made by written request filed with the board not less than 12 full calendar months prior to the employee’s retirement date. If the election is not filed at least 12 full calendar months prior to the employee’s retirement date, the option may not take effect until after 12 full calendar months have elapsed after election, and it shall then be effective for all subsequent months. Until the option takes effect, the benefit shall be payable in the normal form only, as if the option had not been elected. Benefits to be paid may not be retroactively adjudged when the option is put into effect. If the pensioner should die before the 100 percent joint and survivor option takes effect, the beneficiary shall receive 60 percent of the pensioner’s benefit under § 20:16:19:22.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

### **20:16:19:24. Effective date of joint and survivor benefit**

The joint and survivor option shall take effect only if the pensioner and pensioner’s contingent annuitant are both alive on the date when it is to take effect.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3–12–222.

**Law Implemented:** SDCL 3–12–218, 3–12–219.

**20:16:19:25. Revocation of joint and survivor benefit**

Once elected, the joint and survivor option may not be revoked except under the following conditions:

(1) Revocation must be made in writing in a form prescribed by the board and filed with the board before the end of the first calendar month for which an optional pension benefit has become payable to the pensioner;

(2) Revocation may not become effective until 12 months after it has been filed. Until then any benefits payable shall be paid in the amount determined under the joint and survivor option, without retroactive adjustment of such payments once revocation takes effect;

(3) The option shall be automatically revoked if the contingent annuitant dies. If the contingent annuitant is the employee's spouse and the spouse is divorced from the employee before a pension in the optional form becomes effective, the employee may continue the option if, within 90 days after such an event, the employee chooses another contingent annuitant and communicates it to the board in writing; and

(4) The designation of a contingent annuitant may not be changed after the first pension payment under the option has been made to the pensioner.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:26. Limitation of joint and survivor benefit option**

The joint and survivor option may not be paid if payment would result in a monthly pension of less than \$20 to the pensioner or the contingent annuitant.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

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### **20:16:19:27. Credited service**

Credited service under the plan means the last period of continuous employment as a full-time employee with the commission prior to termination of employment for the purpose of retirement. However, if a temporary employee moves from temporary to a full-time status without a break in service, the employee's credited service shall include the period of temporary employment.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:28. Privatization of the plant—Effect on benefits**

Any employee, former employee, pensioner, or any other person affected by the privatization of the plant is entitled to the benefits accrued as of the effective date of the privatization, March 16, 2001. For the purposes of determining eligibility for vesting of service credits pursuant to § 20:16:19:30 and for the purposes of determining qualifications for and amount of early retirement pursuant to §§ 20:16:19:08 and 20:16:19:09, years of continuous service with the successor employer shall be counted.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:29. Interruption of continuous employment**

If continuous employment is interrupted for any cause, except as provided in the plan, any credited service accrued for periods of employment prior to the interruption may not be considered, and the employee shall be treated as a new employee in determining credited service. However, continuous employment is not considered interrupted by leaves of absence from regular employment authorized by the commission for:

- (1) Disability, except in connection with retirement;

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(2) Service in the armed forces of the United States, if the employee returns to employment with the commission within the period of time prescribed by law for the reemployment of veterans; or

(3) Not more than 12 months for any other cause or reason satisfactory to the commission.

No service credit may be granted during any period of authorized leave of absence. Subsections (1) and (3) shall be considered an interruption of service when it applies to a successor employer after March 16, 2001.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:30. Vesting of service credits**

An employee who terminates employment for any reason other than death or early or normal retirement is entitled to a deferred pension if the employee has accumulated at least three years of credited service. The deferred pension shall start on the normal retirement date, or, at the request of the employee, as early as age 55 in accordance with §§ 20:16:19:08 and 20:16:19:09. The deferred pension amount shall be calculated using the benefit formula in effect at the time of the employee's termination with the commission and the years of continuous employment to the date of termination. This benefit shall be increased pursuant to § 20:16:19:39. The accrued benefits of each participant in the plan immediately became 100 percent vested and nonforfeitable on March 16, 2001. If an employee becomes a participant in the retirement plan within the three-year period preceding the employee's 65th birthday, the participant's normal retirement date is the first day of the calendar month coincident with or immediately following the participant's third anniversary of the plan participation. If a participant's employment with the commission is terminated at or after attainment of the participant's normal retirement date, the participant is vested in and entitled to receive the participant's accrued benefit.

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**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**Cross-Reference:** Privatization of the plant—Effect on benefits, § 20:16:19:28.

### **20:16:19:31. Purchase of credited service**

Any employee may elect to purchase additional credit for years of service for which the employee is not presently receiving credit for the purpose of determining eligibility for benefits under the plan, calculating the amount of benefit payments under the plan, or both. Any credited service purchased or transferred under Plans 1 to 5, inclusive, and Plans 1A to 5A, inclusive, including any amendments as well as this Plan 6 shall be used for calculating any and all benefits under this plan, including eligibility for early or normal retirement. The full actuarial costs of such credited service as determined by the actuary shall be paid. The employee may use only the following sources to purchase such credited service.

- (1) All or any portion of the balance of the employee's interest in a qualified trust pursuant to § 401(a) of the Internal Revenue Code;
- (2) The money contained in an individual retirement account or individual retirement annuity of the employee that is attributable to a qualified distribution from a qualified trust pursuant to § 401(a) of the Internal Revenue Code, and qualified as an eligible rollover distribution to § 402 of the Internal Revenue Code; or
- (3) Payment by the commission to pay for all or part of the cost of purchasing credited service on behalf of the employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:32. Advance written applications required**

An application for the commencement of pension benefits shall be in writing on a form and in a manner prescribed by the

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board, and shall be filed with the board in advance of the first month for which benefits are to be paid.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:33. Information required**

An employee, pensioner, or beneficiary shall furnish the board with any information or proof requested by it and reasonably required to administer the plan. Failure on the part of any person to comply with such a request promptly, completely, and in good faith is sufficient grounds for denying benefits to that person. If a pensioner or beneficiary makes a false statement material to any claim for benefits, the person shall be denied all benefits, and the board may recover any payments made in reliance on the false statement.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:34. Payments for incompetents**

If a pensioner or beneficiary is mentally or physically incompetent, payments shall be made to any person who has satisfied the board that he or she is caring for the pensioner or beneficiary. Such payments shall be a complete discharge of the liabilities under this plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:35. Nonalienation of benefits**

No benefit payable at any time under the plan may be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind. An attempt to encumber a benefit in any way is void. A benefit is not subject in any manner to the debts or liabilities of a person to whom the benefit is payable. However, the board may make distributions

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pursuant to a qualified domestic relations order as defined in Internal Revenue Code § 414(p), if the board has notified the employee and any alternate payee of the order and has determined that the order is a qualified domestic relations order.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:36. Terms of employment not affected**

Under no circumstances may an employee's participation in the plan be construed to constitute a contract of continuing employment or in any manner obligate the commission to continue or discontinue the services of an employee.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:37. Reference to other documents**

Any reference in the plan to rights under the plan shall be construed as a reference to rights also under any other instrument, trust agreement, or insurance or annuity contract created or entered into to effect the purposes of the plan.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:38. Rounding of benefit amounts**

The monthly amount of pension benefits, as computed in accordance with §§ 20:16:19:07 to 20:16:19:21, inclusive, or if an adjustment provided elsewhere is applied, shall be rounded to the next higher whole dollar amount.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:39. Improvement factor**

The annual increase in the amount of the benefit paid for each year commencing on the July first that is at least 12

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months following the date on which the benefit was first payable shall be 3.1 percent, compounded annually. This annual increase applies to all employees who retire after April 30, 2000, and to those employees who terminate employment after April 30, 2000, and entitled to a deferred pension pursuant to § 20:16:19:30. The improvement factor for inactive vested employees shall commence on the July first that is at least 12 full calendar months following the date of termination. No individual may be required to incur another improvement factor waiting period when changing from one type of benefit to another type of benefit. Once the original waiting period has applied, future benefits shall automatically increase each July 1 thereafter.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

**20:16:19:40. Minimum distribution requirements**

Benefit payments under the plan must begin by the later of April 1 of the calendar year following the year in which the participant reaches age 70½ or retires. The participant's entire interest in the plan shall be distributed over the life of the participant or the lives of the participant and a designated beneficiary over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and the designated beneficiary. If a participant dies after distribution of benefits has begun, the remaining portion of the participant's interest shall be distributed at least as rapidly as under the method of distribution prior to the member's death. If a participant dies before distribution of benefits has begun, the entire interest of the participant shall be distributed within five years after the participant's death. The five-year payment requirement does not apply to any portion of the participant's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within one year after the date of the participant's death. The five-year payment requirement does not apply to any portion of the participant's interest that is payable to a surviving spouse payable over the life or life expectancy of the spouse that begins

## **CEMENT PLANT EMPLOYEE RETIREMENT PLANS 20:16:19:43**

no later than the date the participant would have reached age 70½.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:41. Limitation on benefits**

Benefits for a participant may not exceed the maximum specified under § 415 of the Internal Revenue Code for governmental plans. This section does not constitute an election under § 415(b)(10)(C) of the Internal Revenue Code.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:42. Amendment and termination of the plan**

The board reserves the right to amend this plan at any time subject to Internal Revenue Code rules regarding accrued benefits of the participants. No modification or amendment of the plan may make it possible for any part of the income or assets of the fund to be used for or diverted to purposes other than for the exclusive benefit of the participants and their beneficiaries. Also no modification or amendment of the plan may reduce benefits to the participants, but benefits may be increased.

The board reserves the right to discontinue this plan in whole or in part. In the event of a termination of the plan, the rights of all affected participants to benefits then accrued shall thereupon become 100 percent vested and nonforfeitable. The board shall take such steps as it determines necessary or desirable to comply with applicable laws.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; 40 SDR 197, effective May 27, 2014.

**General Authority:** SDCL 3-12-222.

**Law Implemented:** SDCL 3-12-218, 3-12-219.

### **20:16:19:43. Reversion of funds**

Repealed.

**Source:** 28 SDR 109, effective February 11, 2002; 36 SDR 207, effective July 1, 2010; repealed, 40 SDR 197, effective May 27, 2014.

## 1971 GROUP ANNUITY MORTALITY TABLES

Chapter 20:16:19  
APPENDIX A

SEE: § 20:16:19:01(6)

Source: 28 SDR 109, effective February 11, 2002; 40 SDR 197, effective May 27, 2014.

1971 GROUP ANNUITY MORTALITY TABLE  
(Probabilities are given from age 20 to 110)

## FEMALE

20	0.000260	51	0.002324	82	0.067936
21	0.000275	52	0.002520	83	0.074351
22	0.000292	53	0.002738	84	0.081501
23	0.000309	54	0.002982	85	0.089179
24	0.000327	55	0.003256	86	0.097468
25	0.000347	56	0.003574	87	0.106452
26	0.000368	57	0.003948	88	0.116226
27	0.000390	58	0.004388	89	0.126893
28	0.000414	59	0.004901	90	0.138577
29	0.000440	60	0.005489	91	0.151192
30	0.000469	61	0.006156	92	0.165077
31	0.000499	62	0.006898	93	0.180401
32	0.000533	63	0.007712	94	0.197349
33	0.000569	64	0.008608	95	0.206129
34	0.000608	65	0.009563	96	0.236970
35	0.000651	66	0.010565	97	0.258059
36	0.000698	67	0.011621	98	0.280237
37	0.000750	68	0.012877	99	0.304679
38	0.000807	69	0.014461	100	0.331630
39	0.000869	70	0.016477	101	0.361361
40	0.000938	71	0.019000	102	0.394167
41	0.001013	72	0.021911	103	0.430366
42	0.001094	73	0.025112	104	0.471522
43	0.001186	74	0.028632	105	0.519196
44	0.001286	75	0.032385	106	0.574950
45	0.001397	76	0.036408	107	0.640345
46	0.001519	77	0.040769	108	0.716944
47	0.001654	78	0.045472	109	0.806309
48	0.001802	79	0.050616	110	0.999999
49	0.001967	80	0.056085		
50	0.002151	81	0.061853		

**1971 GROUP ANNUITY MORTALITY TABLE**  
**(Probabilities are given from age 20 to 110)**

**MALE**

20	0.000530	51	0.005867	82	0.103691
21	0.000522	52	0.006480	83	0.112303
22	0.000544	53	0.007127	84	0.121116
23	0.000566	54	0.007806	85	0.130102
24	0.000591	55	0.008519	86	0.139315
25	0.000617	56	0.009262	87	0.148714
26	0.000650	57	0.010039	88	0.158486
27	0.000684	58	0.010889	89	0.168709
28	0.000722	59	0.011924	90	0.179452
29	0.000763	60	0.013119	91	0.170489
30	0.000809	61	0.014440	92	0.201681
31	0.000860	62	0.015863	93	0.212986
32	0.000916	63	0.017413	94	0.226535
33	0.000978	64	0.017185	95	0.241164
34	0.001046	65	0.021260	96	0.256204
35	0.001122	66	0.023643	97	0.272480
36	0.001204	67	0.026316	98	0.290163
37	0.001295	68	0.029188	99	0.309125
38	0.001397	69	0.032435	100	0.329825
39	0.001509	70	0.036106	101	0.352455
40	0.001633	71	0.040008	102	0.377220
41	0.001789	72	0.043827	103	0.406205
42	0.002000	73	0.047489	104	0.441497
43	0.002260	74	0.051221	105	0.485182
44	0.002569	75	0.055293	106	0.539343
45	0.002922	76	0.060068	107	0.606069
46	0.003318	77	0.065924	108	0.687444
47	0.003754	78	0.072595	109	0.785555
48	0.004228	79	0.079672	110	0.999999
49	0.004740	80	0.087431		
50	0.005285	81	0.095445		

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# Title 62

## South Dakota Retirement System

Article	Chapter
62:01. RETIREMENT. ....	62:01:01
62:03. DEFERRED COMPENSATION PLAN. ....	62:03:01
62:04. SPECIAL PAY RETIREMENT PROGRAM. ....	62:04:01

### ARTICLE 62:01

### RETIREMENT

Chapter	
62:01:01. Definitions.	
62:01:02. Contributions.	
62:01:03. Retirement allowance.	
62:01:04. Disability allowance.	
62:01:05. Election of board of trustees.	
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### CHAPTER 62:01:01

### DEFINITIONS

Section	
62:01:01:01. Definition of terms.	
62:01:01:02. Termination of marriage.	
62:01:01:03. Care of children.	
62:01:01:04. Repealed.	

#### **62:01:01:01. Definition of terms**

Terms defined in SDCL 3–12–47 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) “Disability advisory committee,” a committee composed of the secretary of the Department of Human Services or a designee, a lawyer, and a physician, the latter two members both appointed by the administrator;

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**Repealed**

(2) “Represented group,” a group entitled to elect one or more trustees pursuant to SDCL 3–12–48 and 3–12–49. The group to which a member belongs is determined from the records of the system;

(3) “Employment,” for purposes of SDCL 3–12–103.1, includes engagement of services by an employer who is not a participating unit and self-employment;

(4) “Class B public safety member,” an individual who is a class B member other than a justice, judge, or magistrate judge.

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:01:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998; 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–47, 3–12–49, 3–12–98, 3–12–100.

### **62:01:01:02. Termination of marriage**

For purposes of SDCL 3–12–104, termination of marriage shall occur upon the issuance by a court of a decree of divorce or annulment.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3–12–58, 3–12–104.

**Law Implemented:** SDCL 3–12–104.

### **62:01:01:03. Care of children**

For purposes of SDCL 3–12–95, care of children is the responsibility for the maintenance, education, and supervision of one or more children.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–95.

### **62:01:01:04. Internal Revenue Code. Repealed**

**Source:** 39 SDR 227, effective July 1, 2013; 40 SDR 197, effective May 27, 2014; repealed, SL 2015, ch 25, § 5, effective July 1, 2015.

## ADMINISTRATIVE RULES

### CHAPTER 62:01:02

#### CONTRIBUTIONS

##### Section

- 62:01:02:01. Determination of class A or class B member.
- 62:01:02:02. Repealed.
- 62:01:02:03. Repealed.
- 62:01:02:04. Permanent full-time employee—Probationary period.
- 62:01:02:05. Repealed.
- 62:01:02:06. Refund of active contributions made during period of disability—  
Granted credited service.
- 62:01:02:07. Leave of absence without pay during service purchase agreement—  
Exception for leave of absence for military service.
- 62:01:02:08. Active membership defined by period of contributions—Quarter of  
service based on contribution.
- 62:01:02:09. Contribution reports—Date—Transmittal.
- 62:01:02:10. Preparation and expiration of a contract to purchase credited ser-  
vice.
- 62:01:02:11. Reentry into system for purposes of redeposit—Limit on redeposit.

##### **62:01:02:01. Determination of class A or class B member**

A member is a class A member until proof is supplied to the administrator that a member is a class B member. The administrator shall change the records when a change of duties requires a change of class.

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:02:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-54, 3-12-58.

**Law Implemented:** SDCL 3-12-71, 3-12-91, 3-12-92.

##### **62:01:02:02. Redeposit of contributions. Repealed**

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:02:02, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; repealed, 9 SDR 81, 9 SDR 124, effective July 1, 1983.

##### **62:01:02:03. Penitentiary employees. Repealed.**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 18 SDR 185, adopted May 10, 1992, effective July 1, 1992; repealed, SL 2014, ch 18, § 2, effective July 1, 2014.

**62:01:02:04. Permanent full-time employee—Probationary period**

An employee is a permanent full-time employee if the position held by that employee is classified as a permanent position and the person holding it is required to work 20 or more hours a week and at least 6 months a year. A probationary employee holding such a position is a permanent full-time employee.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-47(38), 3-12-71.

**62:01:02:05. Purchase of permissive service credit. Repealed.**

**Source:** 32 SDR 203, effective June 5, 2006; repealed, 36 SDR 21, effective August 17, 2009.

**62:01:02:06. Refund of active contributions made during period of disability—Granted credited service**

If a disabled member receiving credited service pursuant to SDCL 3-12-103 and § 62:01:04:05.01 becomes employed by a member employer unit, the member and employer shall make active contributions during the period of such employment pursuant to SDCL 3-12-71. Upon the member's conversion of disabled status to retired status, upon the member's termination of disabled status or upon the member's termination of employment, whichever occurs first, the member may request a refund of the member's accumulated contributions made during that period when the member also was receiving credited service due to the disability. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

**Source:** 33 SDR 212, effective June 4, 2007; SL 2014, ch 20, § 34, effective July 1, 2014.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-71, 3-12-103.

**62:01:02:07. Leave of absence without pay during service purchase agreement—Exception for leave of absence for military service**

If a member is purchasing credited service pursuant to SDCL 3-12-83.2 and the member takes a leave of absence authorized

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by the member's employer for a period of less than one year, the member's irrevocable agreement shall continue upon the member's return to active employment as though the member had not taken a leave of absence. The completion date of the agreement shall be modified accordingly, but the payment amounts and all other terms of the agreement shall remain the same.

If a member is purchasing credited service pursuant to SDCL 3-12-83.2 and the member takes a leave of absence authorized by the member's employer for purposes other than military service for a period of one year or greater, the member's irrevocable agreement shall terminate and the member shall receive credited service in proportion to the amount the member paid toward the total agreement amount prior to the leave of absence.

If a member is purchasing credited service pursuant to SDCL 3-12-83.2 and the member takes a leave of absence authorized by the member's employer for purposes of military service for a period of time one year or greater, the member's irrevocable agreement shall continue upon the member's return to active employment as though the member had not taken leave of absence. The completion date of the agreement shall be modified accordingly, but the payment amounts and all other terms of the agreement shall remain the same.

**Source:** 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-83.2.

**62:01:02:08. Active membership defined by period of contributions—Quarter of service based on contribution**

The beginning of a member's period of active membership in the system is established by the date of the employer contribution report to the system that includes the member's initial employee and employer contributions. A member's active membership is terminated when the system receives notice of termination from an employer, accompanied by the member's final employee and employer contributions. If the system receives any employee and matching employer contributions on behalf

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of a member during a calendar quarter, the member shall be credited with a full calendar quarter of contributory service toward calculating the member's benefits or determining the member's eligibility for benefits, but not for determining whether a member's death was active status or inactive status.

**Source:** 33 SDR 212, effective June 4, 2007; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-71, 3-12-72, 3-12-73.

### **62:01:02:09. Contribution reports—Date—Transmittal**

If a participating unit has one or more than one pay date in a month, the participating unit shall prepare at least one contribution report per month. However, if a participating unit has no pay date for participating employees in a particular month, no report is required for that month. Each contribution report shall be dated no later than the last day of its month. The report shall include any pay date and associated contributions for that month. The contribution report and associated contributions shall be transmitted to the system as outlined in SDCL 3-12-72.

**Source:** 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-71, 3-12-72, 3-12-73.

### **62:01:02:10. Preparation and expiration of a contract to purchase credited service**

If a member chooses to purchase credited service pursuant to SDCL 3-12-83, 3-12-83.2, 3-12-84, or 3-12-84.2, system staff shall prepare a contract for the purchase and shall mail the contract to the member for the member's signature. The contract shall include provisions outlining the amount of credited service to be purchased, the duration of the contract, the total cost of the purchase, and the number and amount and timeliness of payments. If the member does not sign, date, and return the contract to the system within 45 days from the date it is mailed, the contract expires.

**Source:** 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-83, 3-12-83.2, 3-12-84, 3-12-84.2.

**62:01:02:11****ADMINISTRATIVE RULES****62:01:02:11. Reentry into system for purposes of redeposit—  
Limit on redeposit**

For purposes of SDCL 3–12–80, a person reenters the system only if the person previously has terminated employment as defined in subdivision 3–12–47(70) or has ceased active membership by shifting to less than permanent full-time status; the person has withdrawn the person’s accumulated contributions pursuant to SDCL 3–12–76 or SDCL 3–12–76.1; and it is the person’s initial return to active status after a termination or shift, accompanied by a withdrawal. The redeposit may apply only to that withdrawal.

**Source:** 37 SDR 214, effective May 30, 2011.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–80.

**CHAPTER 62:01:03****RETIREMENT ALLOWANCE****Section**

62:01:03:01.	Repealed.
62:01:03:02.	Determination of eligibility for retirement allowance.
62:01:03:02.01.	Certification when retired member becomes reemployed—Penalty.
62:01:03:03.	Repealed.
62:01:03:04.	Independent status of the surviving spouse benefit if the member was retired or of retirement age.
62:01:03:05.	Privatized member’s acquisition of certain service credit—Retirement while continuing to work for a private employer.

**62:01:03:01. Application for retirement. Repealed**

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:03:01, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

**62:01:03:02. Determination of eligibility for retirement allowance**

Upon receipt of an application for a retirement allowance, the administrator shall determine whether or not the applicant is eligible for the allowance.

**RETIREMENT****62:01:03:03****Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-56, 3-12-57, 3-12-90 to 3-12-92.

**62:01:03:02.01. Certification when retired member becomes reemployed—Penalty**

If a retired member becomes reemployed by the same employer unit that the member retired from within one year after the member's retirement, the system may require both the member and the employer unit to certify that:

- (1) The member's termination was a complete severance of employment as outlined in SDCL subdivision 3-12-47(70) and in SDCL 3-12-18.1;
- (2) All standard hiring and employment procedures of the employer unit were followed in the reemployment process; and
- (3) No prior agreement to reemploy the member, either overt or covert, existed between the member and the employer unit or any officer of the employer unit.

An employer unit's chief executive officer or the officer's agent or the chair of the employer's governing commission or board shall provide the certification on behalf of the employer unit. The system shall provide forms for the member's and the employer unit's certifications. An intentionally false certification provides grounds for legal recourse pursuant to SDCL 22-29-9.1.

**Source:** 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-47(70), 3-12-81.1, 22-29-9.1.

**62:01:03:03. Members with both class A and class B service.  
Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 24 SDR 160, effective May 24, 1998.

## **62:01:03:04**

## **ADMINISTRATIVE RULES**

### **62:01:03:04. Independent status of the surviving spouse benefit if the member was retired or of retirement age**

The benefit payable pursuant to SDCL 3–12–94 is an independent benefit belonging to the surviving spouse for the purpose of administering an existing qualified domestic relations order.

**Source:** 34 SDR 297, effective June 2, 2008; 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–94, 3–12–97, 3–12–115.

### **62:01:03:05. Privatized member's acquisition of certain service credit—Retirement while continuing to work for a private employer**

Acquisition of years of service toward vesting or early retirement granted pursuant to SDCL 3–12–72.4 ceases upon the member's termination of employment with the private employer, even if the member later returns to employment with that employer. A member in continuing employment with the private employer need not terminate the private employment in order to receive a retirement benefit from the system. However, the member may not acquire additional years of service after the member begins receiving the benefit.

**Source:** 37 SDR 214, effective May 30, 2011.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–72.4.

## **CHAPTER 62:01:04**

### **DISABILITY ALLOWANCE**

#### **Section**

- 62:01:04:00. Application of chapter.
- 62:01:04:01. Repealed.
- 62:01:04:02. Disability—Beginning of benefits.
- 62:01:04:03. Disability determination—Disability advisory committee—Medical examination.
- 62:01:04:04 and 62:01:04:05. Repealed.
- 62:01:04:05.01. Termination of disability allowance—Credited service.
- 62:01:04:05.02. Credited service as employee while disabled.

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## 62:01:04:02

### Section

- 62:01:04:06. Medical examination of member receiving disability allowance—Refusal.
- 62:01:04:07. Participating unit—Filing upon return to service.
- 62:01:04:08. Repealed.
- 62:01:04:09. Criteria for determining disability if contributory service ended prior to July 1, 1995—Position of comparable level.
- 62:01:04:09.01. Criteria for determining disability if contributory service ended after July 1, 1995—Certification by employer.
- 62:01:04:10. Member receiving a disability allowance if service ended prior to July 1, 1994.
- 62:01:04:11 to 62:01:04:12. Repealed.
- 62:01:04:13. Income to be included in earned income.

### 62:01:04:00. Application of chapter

The provisions of this chapter apply to any member whose application for disability benefits was received by the system prior to July 1, 2015.

**Source:** SL 2014, ch 20, § 35, effective July 1, 2014.

**General Authority:** SL 2014, ch 20, § 35.

**Law Implemented:** SL 2014, ch 20, § 35.

### 62:01:04:01. Applications—Requirements. Repealed

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 18 SDR 185, effective May 10, 1992.

### 62:01:04:02. Disability—Beginning of benefits

A member whose application for a disability benefit is approved shall receive the benefit beginning on the first day of the month following the date on which the member's contributory service terminates. If any member fails to terminate contributory service within one year after receiving notice that the member's application has been approved, the member's application approval expires.

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:02, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; SL 2014, ch 20, § 36, effective July 1, 2014.

**General Authority:** SDCL 3-12-58, 3-12-100.

**Law Implemented:** SDCL 3-12-98.

**62:01:04:03. Disability determination—Disability advisory committee—Medical examination**

Upon receipt of an application for a disability allowance, with supporting medical evidence, the administrator shall determine whether the applicant is eligible for a disability allowance. The administrator may request the advice of the disability advisory committee with respect to any application. The recommendation of the disability advisory committee is not binding on the administrator. The disability advisory committee or the administrator may require an independent medical examination of an applicant to be conducted by a licensed, disinterested physician selected by the disability advisory committee or the administrator to evaluate the applicant's condition. The disability advisory committee or the administrator may require a functional capacity assessment of the applicant to be conducted by a licensed professional qualified to administer such assessments, and the assessment may be used to evaluate the applicant's qualification for benefits.

If the administrator determines that the member is not disabled, a notice of the administrator's determination and the reasons for it shall be sent, certified mail, to the applicant's last known address.

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:03, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-57, 3-12-98, 3-12-100.

**62:01:04:04. Appeal of decision. Repealed**

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:04, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

**62:01:04:05. Membership status during disability. Repealed**

**Source:** 2 SDR 17, effective September 9, 1975; 3 SDR 13, effective August 25, 1976; transferred from § 47:07:04:05, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

**62:01:04:05.01. Termination of disability allowance—Credited service**

If a member receiving a disability allowance ceases to be disabled, elects to convert to a retirement benefit, or is converted to a retirement benefit pursuant to SDCL 3–12–103, the disability allowance shall terminate. The member shall receive credited service for the period during which the member receives a disability allowance, but, except as provided in SDCL 3–12–103, not beyond the member's normal retirement age.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–98, 3–12–103.

**62:01:04:05.02. Credited service as employee while disabled**

No member who is receiving a disability allowance and who simultaneously is making contributions to the system may receive more than one year of credited service in any actual year. If the member was contributing for class B credited service immediately prior to approval of a disability allowance and then is contributing to the system for class A credited service while on disability, the member shall be credited with class B credited service through the member's class B normal retirement age and class A credited service for any period that contributions are made after class B normal retirement age.

**Source:** 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–98, 3–12–103.

**62:01:04:06. Medical examination of member receiving disability allowance—Refusal**

The administrator may require a member receiving a disability allowance to undergo a medical examination at any time at the expense of the system. If the member refuses to submit to a medical examination within 30 days of receipt of written notice from the administrator, the one-year period outlined in SDCL 3–12–103.1 begins to run and continues until the member withdraws the refusal. If the refusal continues for one year, the

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member forfeits all rights to the disability allowance. If the member agrees to submit to a medical examination, upon completion of the examination by a physician selected by the administrator, the physician shall provide to the administrator a complete report on the condition of the member. If the administrator finds that the member is no longer disabled, the administrator shall so notify the member by certified mail and the payment of the disability allowance shall terminate pursuant to SDCL 3-12-103.1. Such a finding by the administrator is subject to appeal and review as a contested case.

**Source:** 2 SDR 17, effective September 9, 1975; transferred from § 47:07:04:06, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998; 33 SDR 212, effective June 4, 2007; 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-57, 3-12-98, 3-12-100, 3-12-103.1.

**62:01:04:07. Participating unit—Filing upon return to service**

A participating unit employing a member who is receiving a disability allowance shall file notice with the system designating the date the member returns to work.

**Source:** 2 SDR 17, effective September 9, 1975; transferred from § 47:07:04:07, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58, 3-12-100.

**Law Implemented:** SDCL 3-12-98, 3-12-100.

**62:01:04:08. Report of income by a disabled member. Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 18 SDR 185, effective May 10, 1992; repealed, 24 SDR 160, effective May 24, 1998.

**62:01:04:09. Criteria for determining disability if contributory service ended prior to July 1, 1995—Position of comparable level**

An applicant whose contributory service ends prior to July 1, 1995, shall be granted a disability allowance only if the applicant establishes the following by a preponderance of evidence:

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(1) The applicant has a mental or physical impairment which has been diagnosed by a licensed physician;

(2) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from continuing to perform usual duties for the applicant's employer;

(3) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from performing the duties of a position of comparable level for which the applicant is qualified by education, training, and experience; and

(4) At the time of termination of the applicant's employment, the disability was expected to last at least one year.

Evidence that the applicant could actually secure a position of comparable level or that such a position is actually available is not required to support a finding that an applicant is capable of performing the duties of such a position.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-12-58, 3-12-100.

**Law Implemented:** SDCL 3-12-47(26), 3-12-100, 3-12-141.

### **62:01:04:09.01. Criteria for determining disability if contributory service ended after July 1, 1995—Certification by employer**

An applicant whose contributory service ends on or after July 1, 1995, shall be granted a disability allowance only if the applicant establishes subdivisions (1), (2), and (4), below, by a preponderance of evidence, and provides subdivision (3), below:

(1) The applicant has a mental or physical impairment which has been diagnosed by a licensed physician;

(2) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from continuing to perform usual duties for the applicant's employer;

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(3) At the time of termination of the applicant's employment, the impairment was of sufficient severity to prevent the applicant from performing the usual duties of the applicant's position, the usual duties of the applicant's position with accommodations by the employer, or the usual duties of a position of comparable level with the applicant's employer, all as so certified by the employer; and

(4) At the time of termination of the applicant's employment, the disability was expected to last at least one year.

In providing certification pursuant to subdivision (3), above, an employer shall consider the applicant's education, experience, training, work history, impairment, location of residence, and compensation and benefits in relation to positions of possible comparable level.

**Source:** 24 SDR 160, effective May 24, 1998; 32 SDR 203, effective June 5, 2006.

**General Authority:** SDCL 3-12-58, 3-12-100.

**Law Implemented:** SDCL 3-12-47(26), 3-12-98, 3-12-100, 3-12-141.

**62:01:04:10. Member receiving a disability allowance if service ended prior to July 1, 1994**

For purposes of this chapter, a member is considered to be receiving a disability allowance if the applicant's application for the allowance has been approved, whether SDCL 3-12-101 prevents the member from receiving any payment from the system. The provisions of this section apply only if the member's contributory service ended prior to July 1, 1994.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-101.

**62:01:04:11. Termination of a disability allowance upon return to work if service ended prior to July 1, 1994. Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998; repealed, 34 SDR 297, effective June 2, 2008.

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### **62:01:04:11.01. Termination of disability allowance upon return to work if service ended after July 1, 1994. Repealed**

**Source:** 24 SDR 160, effective May 24, 1998; 32 SDR 203, effective June 5, 2006; repealed, 34 SDR 297, effective June 2, 2008.

### **62:01:04:12. Conversion of disability allowance to early retirement allowance. Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 18 SDR 185, effective May 10, 1992.

### **62:01:04:13. Income to be included in earned income**

For purposes of including earned income in calculations under SDCL 3–12–143, a disabled member’s earned income includes the member’s wages, salaries, tips, or other compensation received by performing personal services for an employer, and includes the net earnings from self-employment in a business that the member owns. Earned income does not include payments from disability insurance coverage obtained by either the member or the member’s employer.

**Source:** 32 SDR 203, effective June 5, 2006.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–143.

## CHAPTER 62:01:05

### ELECTION OF BOARD OF TRUSTEES

#### **Section**

62:01:05:01.	Election of trustees.
62:01:05:01.01.	Terms of trustees.
62:01:05:01.02.	Voting by employers.
62:01:05:01.03.	Official election listing—Voting by members.
62:01:05:01.04.	Candidate restricted by official election listing.
62:01:05:01.05.	Candidate from two represented groups.
62:01:05:02.	Mailing notice of election and nominating petition.
62:01:05:03.	Procedure for nomination—Filing of member petition.
62:01:05:03.01.	Procedure for nomination—Filing of employer petition.
62:01:05:04.	Repealed.
62:01:05:05.	Validity of nominating petition.
62:01:05:05.01.	Special election newsletter—Circulation—Candidate biographies.
62:01:05:06.	Preparation of ballots.
62:01:05:07.	Mailing of ballots.
62:01:05:08.	Validity of member ballot.

## ADMINISTRATIVE RULES

### Section

62:01:05:09.	Validity of employer ballot.
62:01:05:09.01.	No write-in candidates.
62:01:05:10.	Issuance of new ballot.
62:01:05:11.	Repealed.
62:01:05:12.	Counting of ballots—Void ballots.
62:01:05:13.	Results of election.
62:01:05:14.	Contest of election.
62:01:05:15.	Storage of ballots.
62:01:05:16.	Repealed.
62:01:05:17.	Procedure when designated day falls on weekend or holiday.

### **62:01:05:01. Election of trustees**

The board shall hold an election of trustees annually. The ballots for the election are due on May 25. Each represented group that has a trustee whose term expires June 30 is entitled to elect a trustee. The board shall announce the results of the election each year at its first meeting following the ballot due date.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:01, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 10 SDR 58, effective December 11, 1983; 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

### **62:01:05:01.01. Terms of trustees**

The initial term of each trustee representing a represented group shall expire as follows:

- (1) State employees—one term on June 30, 1980, and one term on June 30, 1981;
- (2) Teachers—one term on June 30, 1978, and one term on June 30, 1981;
- (3) Municipal employees—June 30, 1979;
- (4) County employees—June 30, 1981;
- (5) Classified employees—June 30, 1978;
- (6) Law enforcement officers—June 30, 1978;

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- (7) Justices, judges, and law-trained magistrates—June 30, 1979;
- (8) Boards of county commissioners—June 30, 1979;
- (9) School district boards—June 30, 1980;
- (10) Municipal officials—June 30, 1981;
- (11) Retirees—June 30, 1981; and
- (12) Board of regents faculty and administrative employees—June 30, 1980.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

### 62:01:05:01.02. Voting by employers

Each employer whose represented group is entitled to elect a trustee is entitled to one vote.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

### 62:01:05:01.03. Official election listing—Voting by members

The board shall compile an official election listing of active, inactive vested, and retired members of the system by classification of employment as of April 13 or the last working day preceding April 13 each year. The official election listing may be modified after April 13 only if a member has been erroneously misclassified. Each member on record is entitled to one vote in that year's election for a candidate running in the member's classification of employment. A member who belongs to more than one classification of employment may vote only for the candidate in the classification for which the member is listed on the official election listing.

**Source:** 20 SDR 109, effective January 19, 1994; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:01.04****ADMINISTRATIVE RULES****62:01:05:01.04. Candidate restricted by official election listing**

A candidate seeking election to the board to serve on behalf of a represented group shall be a current member of that group. If the candidate is seeking to serve on behalf of an employee represented group, the candidate's current status within the group must be confirmed under the official election listing compiled pursuant to § 62:01:05:01.03.

**Source:** 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:01.05. Candidate from two represented groups**

A candidate seeking election to the board who simultaneously is both retired and a member of another employee represented group shall be deemed a retiree for purposes of §§ 62:01:05:01.03 and 62:01:05:01.04.

**Source:** 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:02. Mailing notice of election and nominating petition**

A notice of election shall be mailed no later than January 15 to at least one authorized agent of any employer having employees entitled to vote in the election and to all retirees entitled to vote in the election. Nominating petitions shall be mailed to all such authorized agents no later than January 15.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:02, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 15 SDR 139, effective March 22, 1989; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:03. Procedure for nomination—Filing of member petition**

A justice, judge, or magistrate judge who is a candidate for nomination for trustee shall file one or more petitions containing, in all, at least five valid signatures of members of the

**RETIREMENT****62:01:05:04****Repealed**

candidate's represented member group. Each other member candidate for nomination for trustee shall file one or more petitions containing, in all, at least 20 valid signatures of members of the candidate's represented group. In addition to the required signatures, each petition shall contain the name, address, and last four digits of the social security number of the member candidate and a declaration of candidacy signed by the candidate. Each nominating petition must be in the possession of the office of the administrator no later than 5:00 p.m. on February 23.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:03, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 10 SDR 58, effective December 11, 1983; 15 SDR 139, effective March 22, 1989; 24 SDR 160, effective May 24, 1998; 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:03.01. Procedure for nomination—Filing of employer petition**

Each employer candidate for nomination for trustee shall file one or more petitions containing, in all, at least 20 valid signatures of members of the candidate's represented group. In addition to the required signatures, each petition shall contain the name, address, and represented employer group of the candidate and a declaration of candidacy signed by the candidate. Each nominating petition must be in the possession of the office of the administrator no later than 5:00 p.m. on February 23.

**Source:** 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:04. Filing for petition. Repealed**

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:04, effective July 1, 1979; repealed, 6 SDR 87, effective March 2, 1980.

**62:01:05:05. Validity of nominating petition**

The board of trustees, a committee of board members, or system staff appointed by the chair shall determine the validity of each nominating petition.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 7:07:05:05, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:05.01. Special election news letter—Circulation—Candidate biographies**

Each year the system's staff shall prepare a special election edition of the newsletter. The special edition shall be provided to each employer unit or each member of a represented group whose representative position on the board is subject to election that year, even if there is only a single candidate for election to the position. Each candidate, even if unopposed and even if the candidate is an incumbent, shall provide to the system a recent photograph and a biography for inclusion in the special edition. The biography shall contain 200 words or less. The biography shall include general background information and may include the candidate's position on any particular system issue if the candidate so chooses. However, a biography may not make reference to another candidate, either by name or indirectly, and may not make reference to another candidate's or trustee's position on any system issue. The board or any person designated by the board shall review each biography. If, upon review, a biography is determined to be out of compliance with the provisions of this section, the board or person reviewing the biography shall communicate with the candidate to prepare a biography that is in compliance with this section. If a candidate refuses to provide a biography that is in compliance, no biography may be printed.

**Source:** 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:06. Preparation of ballots**

The administrator shall prepare separate ballots for each represented group entitled to vote in the election. Each ballot shall contain the appropriate designation of the represented group and the names, in alphabetical order, and the addresses of the candidates. No ballot shall be prepared if there are less than two candidates who have filed valid nominating petitions to represent a represented group.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:06, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:07. Mailing of ballots**

The administrator shall mail no later than April 30 the applicable ballot to each member entitled to vote in the election and to each employer entitled to vote in the election.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:07, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 10 SDR 58, effective December 11, 1983; 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:08. Validity of member ballot**

To be valid, a member ballot must be in the possession of the office of the administrator no later than 5:00 p.m. on May 25. The ballot may be returned enclosed in an envelope.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:08, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 7 SDR 56, effective December 14, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:09****ADMINISTRATIVE RULES****62:01:05:09. Validity of employer ballot**

To be valid, an employer ballot must be signed by the presiding officer of the governing board or commission of the employer and in the possession of the office of the administrator no later than 5:00 p.m. on May 25. The ballot may be returned enclosed in an envelope.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:09, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:09.01. No write-in candidates**

The board may not recognize write-in candidates.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994.

**General Authority:** 3-12-58.

**Law Implemented:** 3-12-49.

**62:01:05:10. Issuance of new ballot**

The administrator may issue a second ballot to a voter only with approval of the internal auditing manager, who has sole control over all replacement ballots. The internal auditing manager may approve the issuance of a replacement ballot only upon receipt of an affidavit from the member or employer eligible to vote that certifies that an original ballot was not received or the original ballot was lost or misplaced and not previously returned to the system.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:10, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-49.

**62:01:05:11. Receipt of ballot. Repealed**

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:11, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9

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## 62:01:05:13

SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; repealed, 31 SDR 191, effective May 22, 2005.

### 62:01:05:12. Counting of ballots—Void ballots

No later than the final business day in May, the board of trustees, a committee of board members, or system staff appointed by the chair shall count the official ballots. For each vacancy to be filled, the candidate receiving the highest number of votes is elected.

Any ballot from which it is impossible to determine the member's choice is void and may not be counted. However, if the member's mark on a ballot is sufficiently plain to determine the member's intention, the board, committee, or staff shall count the vote. This section shall be construed liberally by the board, committee, or staff to assure that each member's vote is counted. The board, committee, or staff shall place any void ballot in a void ballot file.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:12, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005; 32 SDR 203, effective June 5, 2006; 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–49.

### 62:01:05:13. Results of election

The board shall confirm its count or the canvassers' report and shall certify the results of the election at the first board meeting after ballot counting pursuant to § 62:01:05:12 is completed. However, the administrator shall notify all the candidates and the members of the board of the tentative election results within three business days after the ballot counting is completed. If no election is required, the board shall declare the nominee elected.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:13, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–49.

**62:01:05:14. Contest of election**

An election is considered valid unless a notice of contest is filed with the administrator within 15 days after the election results are announced. If such a notice is filed, the board shall hold a hearing pursuant to SDCL chapter 1–26 to determine the validity of the election.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:14, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–49.

**62:01:05:15. Storage of ballots**

The administrator shall keep all ballots cast in a safe place in the office of the administrator before the ballots are counted. The administrator shall hold the counted ballots in the office of the administrator for at least 45 days after the election results are announced or until a contest is finally decided.

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:15, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 20 SDR 109, effective January 19, 1994.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–49.

**62:01:05:16. Filling of vacancies. Repealed**

**Source:** 3 SDR 13, effective August 25, 1976; transferred from § 47:07:05:16, effective July 1, 1979; 6 SDR 87, effective March 2, 1980; repealed, 9 SDR 81, 9 SDR 124, effective July 1, 1983 .

**62:01:05:17. Procedure when designated day falls on weekend or holiday**

Except as otherwise specified, if the date designated for any action under this chapter falls on a Saturday, Sunday, or legal holiday, the action may be taken on the next business day.

**Source:** 15 SDR 139, effective March 22, 1989; 20 SDR 109, effective January 19, 1994; 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–49.

**CHAPTER 62:01:06****APPEALS****Section**

62:01:06:01 to 62:01:06:03. Repealed.

62:01:06:04. Use of digital Dakota network for administrative appeals authorized.

62:01:06:05. Finality of decision if the administrator does not act—Time limit.

62:01:06:06. Written rationale for rejection or modification of a decision or findings—Time limit.

62:01:06:07. Declaratory rulings—Time limit—Hearing examiners.

**62:01:06:01. Right of appeal—Notice. Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 34 SDR 297, effective June 2, 2008.

**62:01:06:02. Independent medical evaluation. Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; repealed, 24 SDR 160, effective May 24, 1998.

**62:01:06:03. Declaratory rulings. Repealed**

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 24 SDR 160, effective May 24, 1998; repealed, 34 SDR 297, effective June 2, 2008.

**62:01:06:04. Use of digital Dakota network for administrative appeals authorized**

Any administrative appeal conducted pursuant to this chapter may utilize the digital Dakota network for any proceedings held as part of any such appeal.

**Source:** 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–57.

**62:01:06:05. Finality of decision if the administrator does not act—Time limit**

If the administrator does not accept, reject, or modify the hearing examiner's proposed findings of fact, conclusions of law, and decision within 30 days after receiving them, the proposals become the final agency decision unless a party to

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the proceedings files a petition requesting formal administrative agency review of the proposals.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 1-26D-7, 3-12-57.1.

**62:01:06:06. Written rationale for rejection or modification of a decision or findings—Time limit**

If the administrator rejects or modifies the hearing examiner's proposed findings of fact, conclusions of law, or decision, the administrator shall state the rationale for the rejection or modification in writing within 30 days and shall date the written document and provide it to the interested parties.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 1-26D-8, 3-12-57.1.

**62:01:06:07. Declaratory rulings—Time limit—Hearing examiners**

A petition for a declaratory ruling pursuant to SDCL 1-26-15 shall be heard in accordance with the procedures in SDCL chapter 1-26. The petition shall be filed within 30 days of the event giving rise to the petition. The administrator may utilize the services of a hearing examiner to hear the arguments of interested parties and to issue a recommended ruling to the administrator.

**Source:** 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 1-26-15, 3-12-57.1.

## **CHAPTER 62:01:07**

### **ADMINISTRATION**

**Section**

62:01:07:01.	Secretary to board—Filing.
62:01:07:02.	Inspection and correction of files.
62:01:07:03.	Waiver of privilege.
62:01:07:04.	Authorized agents.

## RETIREMENT

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### Section

- 62:01:07:05. Procedure for filling a vacancy on the board.
- 62:01:07:06. Beneficiary designated by qualified domestic relations order.
- 62:01:07:07. Prospective nature of qualified domestic relations orders.
- 62:01:07:08. Repealed.
- 62:01:07:09. Lump-sum payments subsequent to annuity payments.
- 62:01:07:09.01. Opportunity to rescind election of annuity payment option—Overpayments.
- 62:01:07:09.02. Rollover of lump-sum distribution by inactive member.
- 62:01:07:10. Rollover of beneficiary payment by surviving spouse or other beneficiary.
- 62:01:07:11. Elected official's period of participation—Notice of nonparticipation or participation—Presumption—Appointed official.
- 62:01:07:12. Member repayment of overpayments—Options—Interest—Delayed repayment—Failure by member to select an option—System notice and member understanding.
- 62:01:07:13. Administration of additional survivor protection contributions and coverage.

### 62:01:07:01. Secretary to board—Filing

The administrator shall act as secretary to the board. Any document required to be filed with the board shall be filed with the administrator.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–57.

### 62:01:07:02. Inspection and correction of files

A member of the system, upon request, may inspect, during regular business hours, any file directly relating to the member. The member may request correction of any alleged errors in the file.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3–12–58.

**Law Implemented:** SDCL 3–12–73.

### 62:01:07:03. Waiver of privilege

A filing of a notice of appeal of an administrator's decision by a member for a hearing to be conducted by a hearing examiner shall be, for the purpose of the hearing and any subsequent appeal, a waiver by the member of any privilege against disclo-

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sure of information contained in the files of the system relevant to the subject matter of the hearing.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983; 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-57.1, 3-12-58.1.

**62:01:07:04. Authorized agents**

Each participating unit may appoint persons to serve as authorized agents. Each person so appointed shall be an employee of the participating unit. An authorized agent shall be the agent of the participating unit and shall provide liaison between the participating unit and the system.

**Source:** 6 SDR 87, effective March 2, 1980; 9 SDR 81, 9 SDR 124, effective July 1, 1983.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-72, 3-12-73.

**62:01:07:05. Procedure for filling a vacancy on the board**

The administrator shall be notified of a vacancy on the board by the vacating board member, by the member's participating unit's governing body, by the member's employer, or by any other board member. Upon the administrator's receipt of notice, the procedure to fill the vacancy shall be as follows:

(1) The administrator shall notify all members of the board of the vacancy;

(2) If circumstances permit, the administrator shall ask the incumbent to recommend a replacement to serve in the incumbent's stead;

(3) If the vacancy is for a trustee to serve on behalf of an employer represented group, the administrator shall notify the governing body of each participating unit affected by the vacancy of the vacancy and request the governing body's input in seeking a qualified candidate. The administrator shall solicit résumés of qualified individuals from governing bodies and interested individuals. The résumés shall be submitted to the administrator. If a state-wide association exists that is made up of members of the employer represented

group, the administrator shall notify the association of the vacancy and request the association's input in seeking a qualified candidate. If the vacancy is for a trustee to serve on behalf of an employee represented group, the administrator shall notify all authorized agents for the group affected by the vacancy of the vacancy and request that all employees affected by the vacancy be advised of the vacancy. Any interested member of the represented group may submit his or her résumé to the administrator. If a state-wide association exists that is made up of members of the employee represented group, the administrator shall notify the association of the vacancy and request the association's input in seeking a qualified candidate;

(4) The administrator shall provide to each board member a copy of each résumé received;

(5) At its next regularly-scheduled meeting, the board, by secret ballot, shall select a replacement trustee from among those individuals who submitted résumés; and

(6) The replacement trustee shall fill the vacancy on the board immediately and shall serve until the regular term of the vacancy has been completed and the position is filled for a new term through a normal election pursuant to SDCL 3-12-49 and chapter 62:01:05.

The provisions of this section notwithstanding, no vacant position may be filled unless the vacancy occurs at least eight months prior to when a normal election for a regular term will be completed to fill that trustee position pursuant to SDCL 3-12-49 and chapter 62:01:05.

**Source:** 31 SDR 191, effective May 22, 2005; 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-53.

**62:01:07:06. Beneficiary designated by qualified domestic relations order**

If a qualified domestic relations order provides that a member's former spouse shall be treated as a beneficiary for any payment pursuant to SDCL 3-12-110, the provision shall su-

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percede any contrary beneficiary designation by the member. In any such instance, the provision of the qualified domestic relations order and the member's beneficiary designation shall be administered in a manner to give full effect to the order and both proportional and equitable effect to the member's designation of any beneficiary by the member.

**Source:** 32 SDR 203, effective June 5, 2006.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-110, 3-12-115.

**62:01:07:07. Prospective nature of qualified domestic relations orders**

The provisions of a qualified domestic relations order shall be prospective from the date of the order. Any division of benefits paid prior to the date of the order, service of the order upon the system, or qualification of the order by the system, whichever is later, shall be the responsibility of the parties to the order. However, the administrator may agree to adjust future payments to remedy an error in prior payments if the error in prior payments involved the system.

**Source:** 32 SDR 203, effective June 5, 2006.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-115.

**62:01:07:08. Right of review—Notice. Repealed**

**Source:** 32 SDR 203, effective June 5, 2006; repealed, 34 SDR 297, effective June 2, 2008.

**62:01:07:09. Lump-sum payments subsequent to annuity payments**

No member may withdraw accumulated contributions pursuant to SDCL 3-12-76 or 3-12-76.1 if more than one annuity payment has been made to the member pursuant to SDCL 3-12-75, 3-12-91, 3-12-92, 3-12-92.4, 3-12-99, or 3-12-103.

**Source:** 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-76, 3-12-76.1.

**62:01:07:09.01. Opportunity to rescind election of annuity payment option—Overpayments**

No member may elect to change normal payment of the member's retirement annuity in favor of adjusted payments pursuant to SDCL 3-12-107, or the opposite, if more than one monthly retirement annuity payment has been made to the member. If a member who has received one adjusted payment pursuant to SDCL 3-12-107 elects to change to the normal method of payment, the system shall deduct in lump-sum the amount of the resulting overpayment from the member's next monthly annuity payment. A deduction may be one hundred percent of the member's normal benefit, if necessary, and may extend to subsequent benefit payments, if necessary, to eliminate the overpayment in the shortest time possible.

**Source:** 37 SDR 214, effective May 30, 2011.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-91, 3-12-92, 3-12-92.4, 3-12-107.

**62:01:07:09.02. Rollover of lump-sum distribution by inactive member**

A member who elects to withdraw the member's accumulated contributions pursuant to SDCL 3-12-76 or SDCL 3-12-76.1 may transfer a portion or all of the member's account by rollover to another plan which is eligible under § 401, 403(b), 408, 408A, or 457(b) of the Internal Revenue Code.

**Source:** 37 SDR 214, effective May 30, 2011; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-12-76.3.

**Law Implemented:** SDCL 3-12-76.3.

**62:01:07:10. Rollover of beneficiary payment by surviving spouse or other beneficiary**

A member's surviving spouse may transfer a portion or all of the member's account by rollover to another plan which is eligible under §§ 401, 403(b), 408, 408A, or 457(b) of the Internal Revenue Code. A member's beneficiary who is not the member's surviving spouse may transfer a portion or all of the member's account by rollover to a plan which is eligible under § 408 or 408A of the Internal Revenue Code.

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**Source:** 33 SDR 212, effective June 4, 2007; 35 SDR 82, effective October 22, 2008; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-76.3, 3-12-110, 3-12-116.

**62:01:07:11. Elected official's period of participation—Notice of nonparticipation or participation—Presumption—Appointed official**

If an elected official chooses to participate in the system pursuant to SDCL 3-12-64, the official shall continue participation until the completion of the official's term of office. If the official is reelected, for a period of 90 days after the reelection the official again has a choice whether to continue participation in the system. If the official chooses to discontinue active membership in the system, the official shall so notify the system by filing a system termination form within the 90-day period. If an official so files a termination form, any employee and employer contributions made during the 90-day period on behalf of the official shall be returned to the employer as contributions in error. An official may continue active membership by filing a new system enrollment form. Failure to file either form within the 90-day period shall be deemed to be an election by the official to continue active participation in the system. An individual appointed to fill a position that normally is elected shall be treated in the same manner as an elected official by the system.

**Source:** 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-64.

**62:01:07:12. Member repayment of overpayments—Options—Interest—Delayed repayment—Failure by member to select an option—System notice and member understanding**

A member who must repay an overpayment of benefits pursuant to SDCL 3-12-114 may choose to make the repayment by an actuarial reduction in monthly benefits based on the mortality table and scale used to determine an actuarial equivalent as defined in SDCL subdivision 3-12-47(3). If the member does not have a spouse, the reduction shall continue for the member's lifetime. If the member has a spouse, the reduction shall

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reduce both the member's monthly benefits and the surviving spouse's monthly benefits and shall continue for both the member's and the surviving spouse's lifetimes.

In the alternative, a member who must repay an overpayment of benefits pursuant to SDCL 3-12-114 may choose to make immediate repayment in a lump-sum from other funds or may choose to make repayment by monthly benefit reductions over a period not to exceed three years. Repayment shall include interest at the assumed rate of return as defined in SDCL subdivision 3-12-47(9A), unless the overpayment is due to a system error, in which case the administrator may absolve any interest accrual.

If a member's repayment is delayed for more than three months, interest on the overpayment amount shall accrue during the period of delay at the system's assumed rate of return, unless the overpayment is due to a system error, in which case the administrator may absolve any interest accrual.

If a member who must repay an overpayment does not choose a repayment option within two months after being given notice of the overpayment, the member is deemed to have chosen to make repayment by actuarial reduction as outlined in this section. If repayment is pursuant to an actuarial reduction by either the member's choice or the member's failure to choose a repayment option, system staff shall inform the member that the reduction is unlikely to result in repayment of the exact amount of the overpayment, plus interest if appropriate, and the member is presumed to so understand.

**Source:** 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-114.

### **62:01:07:13. Administration of additional survivor protection contributions and coverage**

A member enrolled in the additional survivor protection program pursuant to SDCL 3-12-104 prior to July 1, 2010, may maintain that coverage so long as there is no break in the member's contributions or employment. Any of the following

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constitutes a break in a member's contributions or employment:

- (1) Voluntary or involuntary discontinuance of contributions;
- (2) Required discontinuance pursuant to SDCL 3-12-104;
- (3) Termination of covered employment as defined in subdivision 3-12-47(70), even if the member returns to covered employment with the same employer or a different employer;
- (4) Leave of absence, except for military leave of absence;  
or
- (5) A break in service due to a series of two or more contracts for specified months of service.

A military leave of absence is not a break in contributions or employment. A transfer within an employer unit or from one employer to another without a termination is not a break in contributions or employment.

**Source:** 37 SDR 214, effective May 30, 2011.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-104.

**CHAPTER 62:01:08****BENEFIT LIMITS****Section**

- 62:01:08:01. Maximum annual benefit.  
62:01:08:02. Repealed.  
62:01:08:03. Applicability of limits.  
62:01:08:04. Repealed.

**62:01:08:01. Maximum annual benefit**

Annual benefits payable to a member may not exceed \$160,000, as indexed pursuant to § 415(d)(1) of the Internal Revenue Code.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 39 SDR 227, effective July 1, 2013.

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**General Authority:** SDCL 3-12-89.1.

**Law Implemented:** SDCL 3-12-89.1.

### **62:01:08:02. Earnings inclusions and exclusions. Repealed**

**Source:** 14 SDR 57, effective October 18, 1987; repealed, 24 SDR 160, effective May 24, 1998.

### **62:01:08:03. Applicability of limits**

If a member has been credited with less than 10 years of credited service, the maximum annual retirement allowance shall be reduced by multiplying the maximum annual pension by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is 10.

The limits in § 62:01:08:01 apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between ages 62 and 65. The limits, however, do not apply to any portion of a benefit resulting from required member contributions made on an after-tax basis. If payment begins before age 62, the limits shall be reduced so that they are actuarially equivalent to such a benefit beginning at age 62. For police or fire fighters who are members of the system, the limit may not be reduced for retirement before age 62, regardless of retirement age, provided that the member has completed at least 15 years of credited service. If payment begins after age 65, the limit is the actuarial equivalent of a \$160,000 annual benefit, as indexed pursuant to § 415(d)(1) of the Internal Revenue Code, commencing at age 65. The interest assumption for purposes of determining actuarial equivalency under this section is the interest rate otherwise used for purposes of computing optional forms of income payable under the system, but the rate may not be less than 5 percent annually if benefits begin before age 62 and may not exceed 5 percent annually if benefits begin after age 65.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-12-89.1.

**Law Implemented:** SDCL 3-12-89.1.

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Repealed

**62:01:08:04. Annual benefit under combination of plans. Repealed**

**Source:** 14 SDR 57, effective October 18, 1987; repealed, 24 SDR 160, effective May 24, 1998.

**CHAPTER 62:01:09**

**SUPPLEMENTAL PENSION BENEFIT**

**Section**

- 62:01:09:01. Definition of participant.
- 62:01:09:02. System may pay a single monthly payment.
- 62:01:09:03. Proof of participant's marital status.
- 62:01:09:04. Increase in supplemental pension spouse's benefit.
- 62:01:09:05. No increase in value of single premium.
- 62:01:09:06. Participant's status as a retiree.
- 62:01:09:07. Basis for monthly benefit.
- 62:01:09:08. Distributions deemed reasonable and made in good faith under federal law.

**62:01:09:01. Definition of participant**

For purposes of this chapter, the term, participant, has the same meaning as the term, supplemental pension participant, as defined in SDCL 3-12-47.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-47.

**62:01:09:02. System may pay a single monthly payment**

The system may pay the participant's monthly supplemental pension benefit and the participant's monthly retirement allowance in a single payment. However, for all other purposes, each shall be regarded as a separate benefit, including provision of a separate Internal Revenue Service Form 1009-R for each by the system.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-191.

**62:01:09:03. Proof of participant's marital status**

A participant who is married at the time that the participant contracts for a supplemental pension benefit shall provide a

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copy of the participant's marriage license to the system. A participant who is not married at the time of contract shall certify the participant's single marital status to the system.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-192.

### **62:01:09:04. Increase in supplemental pension spouse's benefit**

A supplemental pension spouse's benefit shall receive an annual increase in the same manner as does a participant's benefit.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-192, 3-12-193.

### **62:01:09:05. No increase in value of single premium**

For purposes of calculating any beneficiary payment, a participant's single premium does not increase in value during the period of the supplemental pension contract.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-47, 3-12-194.

### **62:01:09:06. Participant's status as a retiree**

For purposes of this chapter, a member of the system who has received payment of at least one monthly retirement allowance is a retiree, even if the member has returned to employment with a member unit, either with or without suspension of the retirement allowance.

**Source:** 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-47, 3-12-191.

### **62:01:09:07. Basis for monthly benefit**

A participant's monthly benefit shall be based on the participant's single premium and the current interest rate assumption at the time of purchase, and shall take into account the participant's age, gender, and marital status at the time of purchase. A

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participant shall have no expectation or fundamental right to any particular monthly benefit amount on any other basis, including the amount of a monthly benefit being paid to another participant.

**Source:** 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-190, 3-12-192.

**62:01:09:08. Distributions deemed reasonable and made in good faith under federal law**

Pursuant to Internal Revenue Service Treasury Regulation 1.401(a)(9)-1, any supplemental pension benefit calculation or payment is deemed to be reasonable and made in good faith under § 401(a)(9) of the Internal Revenue Code.

**Source:** 37 SDR 214, effective May 30, 2011; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-189, 3-12-195, 3-12-196.

## **ARTICLE 62:03**

### **DEFERRED COMPENSATION PLAN**

#### **Chapter**

- 62:03:01. Definitions.
- 62:03:02. Participation in plan.
- 62:03:03. Amounts of deferrals.
- 62:03:04. Participants' accounts and investments.
- 62:03:05. Distributions.
- 62:03:06. Administration.
- 62:03:07. Automatic enrollment.

#### **CHAPTER 62:03:01**

#### **DEFINITIONS**

#### **Section**

- 62:03:01:01. Definitions.
- 62:03:01:02. Designated Roth contributions treated as deferrals.

#### **62:03:01:01. Definitions**

In addition to the terms defined in SDCL 3–13–55, terms used in this article mean:

- (1) "Account," the record for each participant reflecting the amount of the participant's deferrals, allocated investment gains and losses, and administrative charges against those amounts;
- (2) "Accounting date," the date on which an investment is valued and the total investment return is allocated to a participant's account;
- (3) "Administrator," the administrator of the South Dakota Retirement System as provided in SDCL 3–12–55;
- (4) "Automatic enrollee," a person who becomes an employee of an automatic enrollment unit;
- (5) "Automatic enrollment unit," any unit of state or local government that participates in the system and whose leader-

ship chooses to extend the automatic enrollment provisions of chapter 62:03:07 to the unit's employees pursuant to § 62:03:07:01;

(6) "Board," the Board of Trustees of the South Dakota Retirement System;

(7) "Compensation," total cash remuneration paid to an employee by a participating employer for personal services rendered to the participating employer;

(8) "Deferred compensation" or "deferrals," the portion of a participant's compensation deferred pursuant to this plan, including pre-tax contributions, designated Roth contributions, or both;

(9) "Dependent," a participant's qualifying child or a participant's qualifying relative, each as defined in § 152 of the Internal Revenue Code;

(10) "Designated Roth contributions," a participant's deferred compensation that is includable in the participant's gross income at the time deferred and has been irrevocably designated as Roth contributions by the participant in accordance with federal law;

(11) "Employee," a person providing services to the state or a political subdivision of the state for which compensation is paid by a participating employer, including employees of any agency, board, or commission of the state and its political subdivisions; members of the Legislature; members of any board or commission of the state and any of its political subdivisions; and persons furnishing services to the state or any political subdivision pursuant to a contract as independent contractors;

(12) "Includible compensation," the compensation remaining after subtracting any pre-tax contributions under the plan;

(13) "Normal retirement date," the date a participant retires pursuant to a participating employer's retirement plan without reduced benefits;

(14) "Participant," an employee of a participating employer who elects to participate in the plan;

(15) "Participating employer," the state of South Dakota, any of its agencies, boards, and commissions, and any political subdivision as identified in § 62:03:02:01;

(16) "Participation agreement," the written agreement between employer and employee under which compensation is deferred pursuant to this plan;

(17) "Pre-tax contributions," a participant's deferred compensation that is not includable in the participant's gross income at the time deferred;

(18) "Severance from employment," the complete severance of a participant's employment relationship with a participating employer as set out in § 457(d)(1)(A)(ii) of the code;

(18A) "System," the South Dakota Retirement System created in SDCL chapter 3-12;

(19) "Third-party administrator," a person who, pursuant to contract, handles administration of the plan on behalf of the board and the administrator;

(20) "Unforeseeable emergency," severe financial hardship to a participant resulting from an illness or accident of the participant, of a dependent of the participant, or of a designated beneficiary of the participant, funeral expenses of a dependent of the participant or of a designated beneficiary of the participant, severe loss of income that is completely beyond the control of the participant, loss of the participant's property due to casualty, imminent foreclosure or eviction from a participant's primary residence, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant; and

(21) "Vendor," a person or organization selected by the state investment officer to provide investment or insurance products to the plan.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111,

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effective February 14, 2002; 33 SDR 212, effective June 4, 2007; 35 SDR 82, effective October 22, 2008; 39 SDR 227, effective July 1, 2013; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3–13–54, 3–13–57.

**Law Implemented:** SDCL 3–13–49, 3–13–57.

## **62:03:01:02. Designated Roth contributions treated as deferrals**

Unless specifically stated otherwise, designated Roth contributions shall be treated as deferred compensation for all purposes under the plan.

**Source:** 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3–13–57.

**Law Implemented:** SDCL 3–13–57.

## **CHAPTER 62:03:02**

### **PARTICIPATION IN PLAN**

#### **Section**

62:03:02:01.	Participation by political subdivisions.
62:03:02:02.	Participation by employees.
62:03:02:03.	Enrollment of participants.
62:03:02:04.	Participation agreement.
62:03:02:05.	Modification of enrollment.
62:03:02:05.01.	Employer contributions—System contributions—Vesting.
62:03:02:06.	Revocation of enrollment.
62:03:02:07.	Designation of beneficiary—Distribution of benefits.
62:03:02:08.	Deferred compensation plans only as supplemental retirement plans.
62:03:02:09.	Participation restrictions on or after an unforeseeable emergency distribution.

#### **62:03:02:01. Participation by political subdivisions**

Any political subdivision which participates in the South Dakota retirement system provided in SDCL 3–12 or which participates in a previously established retirement plan pursuant to SDCL 3–12–65 is a participating employer in the plan.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3–13–54.

**Law Implemented:** SDCL 3–13–49.

**62:03:02:02. Participation by employees**

Any employee receiving compensation from a participating employer may elect to participate in the plan.

**Source:** 14 SDR 57, effective October 18, 1987.

**General Authority:** SDCL 3-13-49, 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:02:03. Enrollment of participants**

An eligible employee may become a participant by signing a participation agreement. Participation becomes effective on the first day of the month following the date on which the participation agreement is signed. If a new employee signs and files a participation agreement on the employee's date of hire, that agreement may become effective immediately. The plan may not accept any deferrals unless a signed participation agreement is on file in the office of the administrator or the third-party administrator.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-49.

**62:03:02:04. Participation agreement**

The administrator shall establish a form of participation agreement which includes the name, address, social security number, and birthdate of the participant and the participant's beneficiary; the name and address of the participant's employer; the participant's selection of investment alternatives; and any other information necessary for the administration of the plan.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-50.

**62:03:02:05. Modification of enrollment**

Subject to the limitations contained in this article, a participant may modify the terms of the participant's participation at any time.

## **62:03:02:05**

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**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-49.

### **62:03:02:05.01. Employer contributions—System contributions—Vesting**

A participating employer or the system may make contributions to a participant's account on behalf of the participant, except during an automatic enrollee's 90-day opt-out period as outlined in § 62:03:07:03. Any employer contributions shall be pursuant to a written agreement as outlined in SDCL 3-13-49.1. The agreement may require contributions by a participant in order to qualify for employer contributions and may establish employer contribution rates that partially or fully match the participant's contributions. The board shall establish any system contributions. The board may require contributions by a participant in order to qualify for system contributions and may establish system contribution rates that partially or fully match the participant's contributions. Any employer contributions or system contributions shall vest immediately with the participant.

**Source:** 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-13-45.

**Law Implemented:** SDCL 3-13-56.

### **62:03:02:06. Revocation of enrollment**

A participant may cease making deferrals at any time.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-49.

### **62:03:02:07. Designation of beneficiary—Distribution of benefits**

A participant may designate a beneficiary to receive the participant's benefits under the plan in case of the death of the participant. If the beneficiary does not survive the participant or if no beneficiary is designated, the participant's benefits shall be paid as follows:

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- (1) To the participant's surviving spouse;
- (2) If there is no surviving spouse, then to all surviving children of the participant, irrespective of age, on a share-alike basis; or
- (3) If there is no surviving spouse and there are no surviving children, then to the participant's estate.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

### **62:03:02:08. Deferred compensation plans only as supplemental retirement plans**

No political subdivision may maintain as its principal retirement plan a deferred compensation plan unless the deferred compensation plan was established prior to 1974. Any deferred compensation plan established pursuant to SDCL chapter 3-13 may only be supplemental or secondary to the political subdivision's primary plan.

**Source:** 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-12-58.

**Law Implemented:** SDCL 3-12-65, 3-12-66, 3-13-49.1.

### **62:03:02:09. Participation restrictions on or after an unforeseeable emergency distribution.**

If a participant receives approval of an unforeseeable emergency distribution pursuant to § 62:03:05:06, the participant shall cease deferrals to the plan before the distribution may be completed. The participant may not resume deferrals to the plan for six months after the distribution.

**Source:** 36 SDR 21, effective August 17, 2009.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

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CHAPTER 62:03:03

AMOUNTS OF DEFERRALS

**Section**

62:03:03:01.	Minimum deferral.
62:03:03:02.	Maximum deferral.
62:03:03:02.01.	Roth contributions allowed—Roth and other deferrals permitted in same year—Limits.
62:03:03:03.	Catch up.
62:03:03:03.01.	Alternative catch up.
62:03:03:03.02.	Mandated choice between catch up provisions.
62:03:03:04.	Repealed.

**62:03:03:01. Minimum deferral**

A participant may not defer less than \$25 a month.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989.

**General Authority:** SDCL 3-13-49, 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:03:02. Maximum deferral**

Except as provided in § 62:03:03:03, a participant may not defer more in any plan year than the lesser of the applicable dollar amount associated with a particular year pursuant to § 457(e)(15)(A) of the code, as indexed after 2006 pursuant to § 457(e)(15)(B) of the code, or one hundred percent of the participant's includible compensation.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:03:02.01. Roth contributions allowed—Roth and other deferrals permitted in same year—Limits**

A participant may designate that all or a portion of the participant's deferred compensation be treated as designated Roth contributions. A participant may defer both designated Roth contributions and pre-tax contributions in the same year. However, total deferrals may not exceed the annual deferral limit provided in § 62:03:03:02.

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**62:03:03:04**  
**Repealed**

**Source:** 39 SDR 227, effective July 1, 2013.  
**General Authority:** SDCL 3-13-57.  
**Law Implemented:** SDCL 3-13-57.

### **62:03:03:03. Catch up**

Effective for each of the three calendar years immediately preceding a participant's normal retirement date, a participant may defer twice the dollar amount specified in § 62:03:03:02.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.  
**General Authority:** SDCL 3-13-54.  
**Law Implemented:** SDCL 3-13-54.

#### **62:03:03:03.01. Alternative catch up**

Effective for any year that a participant is age 50 years or older, the participant may make an additional elective deferral equal to the applicable dollar amount associated with a particular year pursuant to § 414(v)(2)(B) of the code, as indexed after December 31, 2006, pursuant to § 414(v)(2)(C) of the code, in addition to the participant's maximum deferral under § 62:03:03:02.

**Source:** 28 SDR 111, effective February 14, 2002.  
**General Authority:** SDCL 3-13-54.  
**Law Implemented:** SDCL 3-13-54.

#### **62:03:03:03.02. Mandated choice between catch up provisions**

A participant may not exercise both the provisions of § 62:03:03:03 and the provisions of § 62:03:03:03.01 in the same year.

**Source:** 28 SDR 111, effective February 14, 2002.  
**General Authority:** SDCL 3-13-54.  
**Law Implemented:** SDCL 3-13-54.

#### **62:03:03:04. Other limitations. Repealed**

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; repealed, 28 SDR 111, effective February 14, 2002.

## ADMINISTRATIVE RULES

### CHAPTER 62:03:04

#### PARTICIPANTS' ACCOUNTS AND INVESTMENTS

##### Section

62:03:04:01.	Repealed.
62:03:04:02.	Ownership of deferrals and investments—Assets held in trust— Time limit on transfers.
62:03:04:03.	Election of investments by participants.
62:03:04:04.	Transfer of funds.
62:03:04:05.	Establishment of accounts.
62:03:04:05.01.	Additional recordkeeping requirements—Designated Roth ac- counts.
62:03:04:06.	Allocation of investment return—Accounting date.
62:03:04:07.	Accounting dates and valuation.
62:03:04:08.	Participant statements.

##### **62:03:04:01. Selection of investments. Repealed**

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; repealed, 28 SDR 111, effective February 14, 2002.

##### **62:03:04:02. Ownership of deferrals and investments—Assets held in trust—Time limit on transfers**

A participant does not have actual ownership of deferrals and investments but has a contractual right to receive benefits under the plan. In accordance with § 457(g) of the code, all amounts of compensation deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts shall be held in trust for the exclusive benefit of the participant until paid or made available to the participant or the participant's beneficiary pursuant to the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of South Dakota.

All amounts of compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, all amounts of compensation deferred under the plan shall be transferred to a trust established under the plan not later than 15 business days after the end of the month in

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which the compensation would otherwise have been paid to the employee.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-53, 3-13-54.

### **62:03:04:03. Election of investments by participants**

Each participant may elect to have deferrals invested in one or more of the investment alternatives selected by the state investment officer. A participant may change the election for future deferrals at any time.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

### **62:03:04:04. Transfer of funds**

Subject to any limitations imposed by a vendor or by a third-party administrator, a participant may elect to transfer any portion of the account balance from one offered investment alternative to another at any time, provided notice is given to the third-party administrator. Any costs associated with such a transfer shall be borne by the participant and shall be deducted from the account.

**Source:** 14 SDR 57, effective October 18, 1987; 14 SDR 95, effective January 10, 1988; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-53, 3-13-54.

### **62:03:04:05. Establishment of accounts**

An account shall be established for each participant's pre-tax contributions. A separate account shall be established for each participant's designated Roth contributions. The accounts shall be the basis for any distribution to the participant or to the participant's beneficiary, surviving spouse, surviving children, or estate pursuant to § 62:03:02:07.

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**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-54, 3-13-57.

**Law Implemented:** SDCL 3-13-53, 3-13-54, 3-13-57.

**62:03:04:05.01. Additional recordkeeping requirements—Designated Roth accounts**

No contributions other than designated Roth contributions and properly attributable investment return may be credited to a participant's designated Roth account. The plan shall maintain separate recordkeeping for each designated Roth account and shall record the year in which the participant first made a designated Roth contribution.

**Source:** 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-57.

**Law Implemented:** SDCL 3-13-57.

**62:03:04:06. Allocation of investment return—Accounting date**

The total investment return on any offered investment shall be allocated to the account of each participant based on the proportion the participant's account bears to all other accounts which have been invested in the same investment alternative. Allocations shall be made on each accounting date. The last day of each calendar quarter is an accounting date. The board may provide additional accounting dates.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-53, 3-13-54.

**62:03:04:07. Accounting dates and valuation**

Each offered investment alternative shall be valued on each accounting date. The valuation shall be at market value. Any charges against the value shall be explicitly disclosed.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-53, 3-13-54.

**62:03:04:08. Participant statements**

Each participant shall be provided with a statement of the participant's account by no later than 45 days after the close of each plan quarter.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-53, 3-13-54.

**CHAPTER 62:03:05****DISTRIBUTIONS****Section**

62:03:05:01.	Conditions for distribution.
62:03:05:02.	Selection of normal retirement date—Amendment.
62:03:05:03.	Severance from employment.
62:03:05:04.	Beginning of distribution.
62:03:05:05.	Form of distribution—Period of distribution.
62:03:05:05.01.	Distribution directed by participant.
62:03:05:06.	Unforeseeable emergency.
62:03:05:07.	In-service distributions of small amounts—Calculation—Handling of certain involuntary distributions.
62:03:05:08.	Distributions deemed reasonable and made in good faith under federal law.

**62:03:05:01. Conditions for distribution**

Deferrals may only be distributed if one of the following conditions has occurred;

- (1) Severance from employment with a participating employer;
- (2) Death of the participant;
- (3) An unforeseeable emergency as set out in § 62:03:05:06;
- (4) Requirements are satisfied for an in-service distribution as set out in § 62:03:05:07; or
- (5) A participant is called to perform qualified military service for a period in excess of 30 days.

## **62:03:05:01**

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**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-49, 3-13-54.

**Law Implemented:** SDCL 3-13-54.

### **62:03:05:02. Selection of normal retirement date—Amendment**

A participant may select a normal retirement date. The normal retirement date may not be earlier than the date on which the participant severs the participant's employment. If a participant does not make a selection, the participant's normal retirement date is as defined in SDCL chapter 3-12.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

### **62:03:05:03. Severance from employment**

If a participant returns to employment or enters into a contract with a participating employer within 30 days after a severance from employment, no severance from employment occurs for the purposes of the plan. If a participant provided contractual services to a participating employer, severance from employment occurs at the expiration of all contracts with a participating employer without expectation of any future employment or contractual relationship with any participating employer.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-49, 3-13-54.

**Law Implemented:** SDCL 3-13-54.

### **62:03:05:04. Beginning of distribution**

Distribution of deferrals to a participant shall begin no earlier than 30 days following the participant's severance from employment with a participating employer. Any irrevocable election of a benefit commencement date made by a participant or a beneficiary prior to January 1, 2002, and any defaulted distribution other than a defaulted distribution to an annuity option are revocable as of January 1, 2002. No distribution to

an independent contractor of a participating employer may begin until one year after the date on which all contracts with any participating employer have expired. Notwithstanding the foregoing, distributions of deferrals must begin no later than the latter of April 1 of the calendar year following the calendar year in which the participant reaches 70½ years of age or April 1 of the calendar year following the calendar year of retirement.

Beneficiary distributions under the plan must begin and subsequent payments must be made no later than the required beginning date and subsequent distribution dates under § 401(a)(9) of the code, as follows:

- (1) The beginning date for distributions to nonspousal beneficiaries must be no later than December 31 of the calendar year immediately following the calendar year in which the participant dies. However, if the 5-year distribution rule of § 401(a)(9)(B)(ii) is used, the entire distribution must be made as of December 31 of the calendar year which contains the fifth anniversary of the date of the participant's death;
- (2) The beginning date for distributions to spousal beneficiaries must be no later than December 31 of the calendar year immediately following the calendar year in which the participant dies or December 31 of the calendar year in which the participant would have reached age 70½.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

#### **62:03:05:05. Form of distribution—Period of distribution**

A participant may elect to receive the participant's distribution in any of the following forms:

- (1) A lump sum;
- (2) Equal monthly installments over a fixed period; or
- (3) Any other form offered by the third-party administrator.

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The election must be made prior to the time any amounts become payable. A participant or a beneficiary who has chosen a payment form other than an annuity shall have the ability to change that payment option, subject to any administrative restrictions and charges established by the board.

If the distribution begins prior to the participant's death, the entire interest shall be distributed over the life expectancy of the participant or the life expectancies of the participant and a designated beneficiary. Any amount not distributed during the participant's life must be distributed after the participant's death at least as rapidly as under the distribution method being used on the date of the participant's death. If the distribution begins after the participant's death, the entire amount payable to the participant must be paid during a period of no more than five years, unless the distribution commences within one year and the participant's spouse is the named beneficiary, then during the life expectancy of the surviving spouse.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:05:05.01. Distribution directed by participant**

A participant may direct from which contributions a withdrawal, including a withdrawal on account of an unforeseeable emergency, shall be made. The participant may direct that the withdrawal be taken from either pre-tax contributions or designated Roth contributions, or from both pre-tax contributions and designated Roth contributions.

**Source:** 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-57.

**Law Implemented:** SDCL 3-13-57.

**62:03:05:06. Unforeseeable emergency**

If a participant suffers an unforeseeable emergency, the participant may request an immediate distribution of all or part of the participant's deferrals. If the administrator approves the

request, the distribution shall be made to the extent necessary to satisfy the need, including payment of federal income tax withholding, if necessary. If the administrator denies the request, the participant may appeal the denial pursuant to the appeal procedures outlined in SDCL 3-12-57.1 and in ARSD chapter 62:01:06 by giving notice of intention to appeal within 30 days after the date of the administrator's written notice of denial. The appeal shall be conducted in accordance with SDCL chapter 1-26. No distribution may be made to the extent that the unforeseeable emergency may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the participant's assets to the extent that the liquidation does not cause severe financial hardship, or by discontinuation of deferrals under the plan. The need to send a participant's child to college, divorce proceedings, or the desire to purchase a home are not considered unforeseeable emergencies. Any amount that is distributed on account of an unforeseeable emergency is not an eligible rollover distribution and the participant may not elect to have any portion of the distribution paid directly to an eligible retirement plan.

The provisions of this section do not apply if a distribution may be made pursuant to § 62:03:05:07.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007; 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:05:07. In-service distributions of small amounts—Calculation—Handling of certain involuntary distributions**

Any other provision of this chapter notwithstanding, a participant may receive an in-service distribution from the plan, or the plan administrator may render an involuntary distribution to the participant, under the following conditions:

- (1) The participant is inactive in the plan and has made no deferrals for at least two years prior to the distribution;

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(2) The total distribution—whether elective or involuntary or both—does not exceed \$5,000; and

(3) The participant previously has not received either an elective or an involuntary distribution under the plan.

If implementing subdivision (2) of this section, the value of a participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earning allocable thereto) within the meaning of §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e) of the code.

If an involuntary distribution is in excess of \$1,000 and if the participant does not elect to have the distribution transferred to an eligible retirement plan pursuant to § 401(a)(31) of the code or does not elect to receive the distribution directly, the distribution shall be transferred to an individual retirement plan of a designated trustee or issuer. The plan administrator shall notify the participant in writing that the distribution may be transferred to another individual retirement plan.

**Source:** 24 SDR 160, effective May 24, 1998; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:05:08. Distributions deemed reasonable and made in good faith under federal law**

Pursuant to Internal Revenue Service Treasury Regulation 1.401(a)(9)-1, any distribution under §§ 62:03:05:04 and 62:03:05:05 is deemed to be reasonable and made in good faith under § 401(a)(9) of the Internal Revenue Code.

**Source:** 37 SDR 214, effective May 30, 2011; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-54

**Law Implemented:** SDCL 3-13-54.

## CHAPTER 62:03:06 ADMINISTRATION

### Section

62:03:06:01.	Conflict of interest.
62:03:06:02.	Assignment.
62:03:06:03.	Trustee-to-trustee transfer and rollover into account.
62:03:06:03.01.	Trustee-to-trustee transfer from account.
62:03:06:03.02.	Rollover from account.
62:03:06:03.03.	In-plan Roth conversion.
62:03:06:04.	Operation of plan for benefit of participants—Assets held in trust.
62:03:06:05.	Repealed.
62:03:06:06.	Filing of required forms.
62:03:06:07.	Correction of errors—Excess deferrals.
62:03:06:08.	Correction of errors—Payroll error.

### 62:03:06:01. Conflict of interest

No employee of a participating employer and no spouse or dependent of the employee may act as or represent a third party administrator or a vendor in a matter concerning the plan, except that the South Dakota investment council and its employees may invest all or part of the fund.

**Source:** 14 SDR 57, effective October 18, 1987; 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-51.1, 3-13-54.

### 62:03:06:02. Assignment

No participant may assign or otherwise alienate any right to benefits under the plan except through the provisions of a qualified domestic relations order as defined in § 414(p) of the code.

**Source:** 14 SDR 57, effective October 18, 1987; 33 SDR 212, effective June 4, 2007.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-51.1, 3-13-54.

### 62:03:06:03. Trustee-to-trustee transfer and rollover into account

To the extent permitted by law, a participant may transfer a portion or all of the participant's account in another plan

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which is eligible under § 401, 403(b), 408, or 457(b) of the code into this plan by trustee-to-trustee transfer or by rollover. The plan shall account for such amounts separately. A participant may rollover designated Roth contributions into the plan only if the contributions are a direct rollover from another plan that permits designated Roth contributions as described in section 402A(e)(1) of the code and only to the extent the rollover is permitted under section 402(c). The plan shall establish and maintain separate recordkeeping for any Roth rollover paid to the plan from any eligible retirement plan and shall record the year in which the participant first made a designated Roth rollover.

**Source:** 14 SDR 57, effective October 18, 1987; 28 SDR 111, effective February 14, 2002; 34 SDR 297, effective June 2, 2008; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-54, 3-13-57.

**Law Implemented:** SDCL 3-13-54, 3-13-57.

**62:03:06:03.01. Trustee-to-trustee transfer from account**

For the purpose of acquiring credited service in a qualified governmental defined benefit retirement plan as identified under § 401(a) and defined in § 414(d) of the code, a participant may transfer a portion or all of the participant's account in the plan by trustee-to-trustee transfer to the government defined benefit retirement plan.

**Source:** 28 SDR 111, effective February 14, 2002.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:06:03.02. Rollover from account**

A participant or a participant's surviving spouse may transfer a portion or all of the participant's account by rollover to another plan which is eligible under §§ 401, 403(b), 408, 408A, or 457 of the code. A participant's beneficiary who is not the participant's surviving spouse may transfer a portion or all of the participant's account by rollover to a plan which is eligible under § 408 or 408A of the code.

## DEFERRED COMPENSATION PLAN

**62:03:06:06**

**Source:** 28 SDR 111, effective February 14, 2002; 33 SDR 212, effective June 4, 2007; 34 SDR 297, effective June 2, 2008; 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

### **62:03:06:03.03. In-plan Roth conversion**

A participant may convert his or her pre-tax contributions to designated Roth contributions within the plan. The amount of the in-plan Roth conversion is subject to ordinary income taxes in the year of the conversion, and withholding of federal income tax from the conversion amount is prohibited. Once an in-plan Roth conversion is processed it is irrevocable. The amount of an in-plan Roth conversion shall continue to be taken into consideration for mandatory distributions. The plan shall establish and maintain separate recordkeeping for any in-plan Roth conversion made within the plan and shall record the year in which the participant first made a conversion.

**Source:** 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-57.

**Law Implemented:** SDCL 3-13-57.

### **62:03:06:04. Operation of plan for benefit of participants— Assets held in trust**

The plan and its assets, until made available to a participant or a beneficiary, shall be maintained in trust for the sole benefit of the participants of the plan.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-53.

### **62:03:06:05. Transfer of accounts upon termination of vendor contract. Repealed**

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; repealed, 28 SDR 111, effective February 14, 2002.

### **62:03:06:06. Filing of required forms**

Any form required under the plan which causes a change on a participant's payroll must be received in the office of the

**62:03:06:06****ADMINISTRATIVE RULES**

third-party administrator prior to the first of the month in which the change is to become effective, and the participant must notify the participant's employer prior to the last date on which the participant's employer can make payroll changes effective. If a form is filed too late for a change to be made effective for the next following pay period, the change becomes effective in the subsequent pay period.

**Source:** 14 SDR 57, effective October 18, 1987; 15 SDR 100, effective January 8, 1989; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**62:03:06:07. Correction of errors—Excess deferrals**

If, due to an error, a participant defers more than the permissible amount, the third-party administrator may correct the error by returning the excess deferral to the participant. For any plan year in which a participant makes both pre-tax contributions and designated Roth contributions, any corrective distribution shall be taken first from the participant's designated Roth contributions, and then, if required, from the pre-tax contributions. However, a participant may elect a different method of distribution.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13-54, 3-13-57.

**Law Implemented:** SDCL 3-13-54, 3-13-57.

**62:03:06:08. Correction of errors—Payroll error**

If, due to a payroll error, a participant's deferral is deposited in an investment alternative other than the one selected by the participant, the third-party administrator may correct the error by transferring the participant's deferral to the proper investment alternative, subject to any limitations which may be imposed by the vendor. No retroactive adjustment may be made.

**Source:** 14 SDR 57, effective October 18, 1987; 24 SDR 160, effective May 24, 1998.

**General Authority:** SDCL 3-13-54.

**Law Implemented:** SDCL 3-13-54.

**CHAPTER 62:03:07**  
**AUTOMATIC ENROLLMENT**

**Section**

- 62:03:07:01. Automatic enrollment units—Automatic escalation—Decision—Rescission of unit’s status—Automatic enrollee’s status.
- 62:03:07:01.01. Automatic escalation for participating employers that became automatic enrollment units prior to July 1, 2015.
- 62:03:07:01.02. Start of automatic escalation at election of unit—Notice required.
- 62:03:07:02. Automatic enrollment.
- 62:03:07:03. Amount of initial deferral—Election to opt out—Time limit—Refund—Future participation.
- 62:03:07:03.01. Automatic escalation—No escalation in first year of hire.
- 62:03:07:04. Automatic enrollment deemed contract—Exceptions.
- 62:03:07:05. Qualified default investment alternative—Secondary alternative—Liability.
- 62:03:07:06. Notices required for automatic enrollment.
- 62:03:07:06.01. Notice of automatic escalation required—Election to opt out—Automatic enrollee status.
- 62:03:07:07. Advance authorization not required—Exception to other laws.

**62:03:07:01. Automatic enrollment units—Automatic escalation—Decision—Rescission of unit’s status—Automatic enrollee’s status**

Any participating employer may become an automatic enrollment unit. Automatic enrollment includes automatic escalation for any participating employer becoming an automatic enrollment unit after June 30, 2015. The decision to become an automatic enrollment unit shall be made by the elected official, the appointed official, or the governing body in charge of the participating employer. The participating employer shall become an automatic enrollment unit after notice of the decision has been delivered in writing to the system. An automatic enrollment unit may choose to rescind such status at a later date and may do so by delivering written notice of that decision to the system. However, if such a rescission occurs, the status of any automatic enrollee, including any automatic enrollee with automatic escalation, who was enrolled in the plan is not affected.

**Source:** 35 SDR 82, effective October 22, 2008; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3–13–54, 3–13–56.

**Law Implemented:** SDCL 3–13–56(2), (10).

**62:03:07:01.01****ADMINISTRATIVE RULES****62:03:07:01.01. Automatic escalation for participating employers that became automatic enrollment units prior to July 1, 2015**

A participating employer who became an automatic enrollment unit prior to July 1, 2015, may elect to add automatic escalation for its current and future permanent employees. The decision shall be made by the elected official, the appointed official, or the governing body in charge of the unit and becomes effective after notice of the decision has been delivered in writing to the system.

**Source:** 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(2), (10).

**62:03:07:01.02. Start of automatic escalation at election of unit—Notice required**

An automatic enrollment unit may elect to commence automatic escalation in either January or July. Automatic escalation commences the January or July immediately after the automatic enrollment unit's decision is delivered in writing to the system as long as notice of the decision is received no later than September 15 for a January start or March 15 for a July start. If the notice of the unit's decision is received after those dates, automatic escalation commences the following January or July, as elected by the unit.

**Source:** 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(10).

**62:03:07:02. Automatic enrollment**

Any person who becomes a permanent employee of a participating employer after the participating employer becomes an automatic enrollment unit becomes an automatic enrollee in the plan.

**Source:** 35 SDR 82, effective October 22, 2008; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(2).

**62:03:07:03. Amount of initial deferral—Election to opt out—  
Time limit—Refund—Future participation**

Upon initially becoming an automatic enrollee, twenty-five dollars per month shall be deferred to the plan from the compensation of an automatic enrollee unless the automatic enrollee elects not to participate in the plan within 90 days after his or her first pay date and gives notice of that election to the system, or unless the automatic enrollee elects to defer an increased amount. The deferred compensation and associated gains or losses of an automatic enrollee who elects not to participate shall be refunded to the automatic enrollee within 30 days of receipt of the final contribution by the plan. An automatic enrollee who elects not to participate, however, is not barred from future voluntary participation in the plan.

**Source:** 35 SDR 82, effective October 22, 2008; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(3), (4), (5).

**62:03:07:03.01. Automatic escalation—No escalation in first  
year of hire**

Beginning in 2016 and each year thereafter, automatic escalation for an automatic enrollee means an additional ten dollars per month shall be deferred to the plan from the compensation of an automatic enrollee of an automatic enrollment unit that elected automatic escalation or became an automatic enrollment unit after June 30, 2015. If the enrollee has one or more investment alternatives or a Roth account, or any combination thereof, the additional dollars shall be prorated in the same manner as the enrollee's deferral before the escalation. However, no automatic escalation may occur for an automatic enrollee unless at least one year has passed from the enrollee's hire date on which the enrollee became an automatic enrollee. In addition, no automatic escalation may occur for an automatic enrollee who opts out of automatic escalation or has lowered his or her deferral to zero.

**Source:** 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(10).

**62:03:07:04. Automatic enrollment deemed contract—Exceptions**

Automatic enrollment pursuant to § 62:03:07:02 is deemed a contract to participate and to defer the amount specified in § 62:03:07:03 or revised by § 62:03:07:03.01 or the amount specified by the enrollee until the automatic enrollee chooses to withdraw from the plan.

**Source:** 35 SDR 82, effective October 22, 2008; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3–13–54, 3–13–56.

**Law Implemented:** SDCL 3–13–56(3), (10).

**62:03:07:05. Qualified default investment alternative—Secondary alternative—Liability**

The deferred compensation of an automatic enrollee shall be deposited in a qualified default investment alternative selected by the state investment officer pursuant to SDCL 3–13–51.1 unless the automatic enrollee affirmatively selects another investment alternative within the plan. The state investment officer shall select a qualified default investment alternative for deferrals from automatic enrollees during the initial 90-day opt-out period and may select an alternative qualified default investment alternative for accumulated deferrals and subsequent deferrals from automatic enrollees who exceed the 90-day opt-out period but do not select another investment alternative. Neither the state investment officer, the system, the third-party administrator, nor the automatic enrollment unit may be held liable for any loss sustained by an automatic enrollee whose deferrals are either voluntarily or involuntarily invested in either qualified default investment alternative.

**Source:** 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3–13–54.

**Law Implemented:** SDCL 3–13–56.

**62:03:07:06. Notices required for automatic enrollment**

Within 15 days of the system's receipt of the automatic enrollee's initial deferral, the system shall provide notice to the automatic enrollee of the enrollee's right not to participate in the plan.

Within one year after an automatic enrollee's first compensation deferral and annually thereafter, the system shall provide notice to the automatic enrollee of the enrollee's right to amend his or her deferral amount and the enrollee's right to amend his or her choice of investment alternatives.

**Source:** 35 SDR 82, effective October 22, 2008; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(8).

**62:03:07:06.01. Notice of automatic escalation required—Election to opt out—Automatic enrollee status**

The system shall provide no less than 60 days' notice of each annual automatic escalation pursuant to § 62:03:07:03.01. An enrollee may elect not to participate in automatic escalation or may elect to defer an additional amount that is less than or greater than ten dollars. The enrollee shall annually provide notice of any such election no later than December 15 for an enrollee of an automatic enrollment unit that elected a January start or June 15 for an enrollee of an automatic enrollment unit that elected a July start. If the enrollee elects not to participate or to defer a lesser amount after the applicable date provided in this section, the system may not refund the automatic escalation amount to the enrollee. If an enrollee elects not to participate in automatic escalation or elects to defer an additional amount that is less than or greater than ten dollars, the status of the automatic enrollee pursuant to § 62:03:07:02 is not affected.

**Source:** 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(10).

**62:03:07:07. Advance authorization not required—Exception to other laws**

Automatic enrollment or automatic escalation pursuant to this chapter does not require advance authorization by the automatic enrollee. This provision is an exception to the provisions of any state law requiring employee authorization for a

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payroll deduction or any similar ordinance of a local automatic enrollment unit.

**Source:** 35 SDR 82, effective October 22, 2008; 41 SDR 219, effective July 1, 2015.

**General Authority:** SDCL 3-13-54, 3-13-56.

**Law Implemented:** SDCL 3-13-56(9).

## **ARTICLE 62:04**

### **SPECIAL PAY RETIREMENT PROGRAM**

**Chapter**

- 62:04:01. Definitions and general terminology.
- 62:04:02. Administration.
- 62:04:03. Distributions.

#### **CHAPTER 62:04:01**

##### **DEFINITIONS AND TERMINOLOGY**

**Section**

- 62:04:01:01. Definitions in general.
- 62:04:01:02. Definition of specific terms.
- 62:04:01:03. Qualifications in regard to compensation.

**62:04:01:01. Definitions in general**

Terms used in this article have the same meaning as they are defined in SDCL 3-12-47 or in SDCL 3-13A-2, unless otherwise so specified.

**Source:** 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3-13A-4.

**Law Implemented:** SDCL 3-13A-4.

**62:04:01:02. Definition of specific terms**

Terms used in this article mean:

(1) "Direct rollover," a payment by the program to an eligible retirement plan specified by the participant;

(2) "Distributee," a participant or former participant; a participant's or former participant's surviving spouse with regard to the interest of the surviving spouse; or a participant's or former participant's former spouse who is an alternate payee under a qualified domestic relations order, as defined in § 414(p) of the code, with regard to the interest of the former spouse;

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(3) “Eligible retirement plan,” an individual retirement account described in § 408(a) of the code; an individual retirement annuity described in § 408(b) of the code; a Roth individual retirement plan described in § 408A of the code; an annuity plan described in § 403(a) of the code; or a qualified plan described in § 401 of the code, any of which accepts a participant’s or a participant’s surviving spouse’s rollover distribution, except that in the case of an eligible rollover distribution to a beneficiary who is not a participant’s surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity;

(4) “Eligible rollover distribution,” any distribution of all or any portion of the balance to the credit of the participant, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life or life expectancy of the participant or the joint lives or joint life expectancies of the participant and the participant’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent the distribution is required under § 401(a)(9) of the code; or any other distribution that is reasonably expected to total less than two hundred dollars during a single plan year;

(5) “Plan year,” a calendar year ending on December 31.

**Source:** 31 SDR 191, effective May 22, 2005; 34 SDR 297, effective June 2, 2008.

**General Authority:** SDCL 3–13A–4.

**Law Implemented:** SDCL 3–13A–4.

**62:04:01:03. Qualifications in regard to compensation**

A participant’s compensation, for purposes of application of the provisions of SDCL 3–13A–5, paid or made available during a plan year shall include any elective deferral, as defined in § 402(g)(3) of the code, and any amount which is contributed or deferred by the participant’s employer at the election of the participant and which is not includible in the gross income of the participant by reason of § 125, § 132(f)(4), or § 457(b) of the code.

## **SPECIAL PAY RETIREMENT PROGRAM**

**62:04:03:01**

**Source:** 31 SDR 191, effective May 22, 2005; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13A-4.

**Law Implemented:** SDCL 3-13A-5.

### **CHAPTER 62:04:02**

#### **ADMINISTRATION**

**Section**

62:04:02:01. Month of a member's birth date.

##### **62:04:02:01. Month of a member's birth date**

For purposes of participation in the program, the first day of the month in which a member's birthday falls shall be considered to be the member's birthday.

**Source:** 31 SDR 191, effective May 22, 2005.

**General Authority:** SDCL 3-13A-4.

**Law Implemented:** SDCL 3-13A-4.

### **CHAPTER 62:04:03**

#### **DISTRIBUTIONS**

**Section**

62:04:03:01. Direct rollovers.

62:04:03:02. Distributions deemed reasonable and made in good faith under federal law.

##### **62:04:03:01. Direct rollovers**

Pursuant to SDCL 3-13A-20, a participant or a participant's surviving spouse may elect, at the time and in the manner prescribed by the third-party administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to an eligible retirement plan specified by the participant or the surviving spouse if the plan is an eligible plan under § 401, 403(b), 408, 408A, or 457 of the code. A participant's beneficiary who is not the participant's surviving spouse may elect, at

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the time and in the manner prescribed by the third-party administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to a plan specified by the beneficiary if the plan is an eligible plan under § 408 or 408A of the code.

**Source:** 31 SDR 191, effective May 22, 2005; 33 SDR 212, effective June 4, 2007; 35 SDR 82, effective October 22, 2008.

**General Authority:** SDCL 3-13A-4.

**Law Implemented:** SDCL 3-13A-20.

**62:04:03:02. Distributions deemed reasonable and made in good faith under federal law**

Pursuant to Internal Revenue Service Treasury Regulation 1.401(a)(9)-1, any distribution under SDCL 3-13A-22 or SDCL 3-13A-23 is deemed to be reasonable and made in good faith under § 401(a)(9) of the Internal Revenue Code.

**Source:** 37 SDR 214, effective May 30, 2011; 39 SDR 227, effective July 1, 2013.

**General Authority:** SDCL 3-13A-4.

**Law Implemented:** SDCL 3-13A-1, 3-13A-10, 3-13A-22, 3-13A-23.